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original staff report

# W14a

**Prepared November 1, 2016 for November 2, 2016 Hearing**

**To:** Commissioners and Interested Persons  
**From:** Susan Craig, District Manager  
Ryan Moroney, Supervising Coastal Planner  
**Subject:** **STAFF REPORT ADDENDUM for W14a**  
**Appeal Number A-3-STC-16-0016 (Honjo SFD Redevelopment)**

The purpose of this addendum is to respond to contentions raised by the Applicants' representative (see letter dated October 27, 2016 attached) in response to the staff recommendation and to provide further support for staff's recommendation that the appeal raises a substantial issue. The responses below are numbered the same as the letter observations.

## **1. Remodel versus Redevelopment**

The Applicants' representative's letter takes issue with staff's characterization of the project as a "redevelopment," and suggests that the project is in fact not that but actually a "remodel." The Applicants' representative correctly frames what is one of the central issues in this appeal, which is whether the scope and extent of the City-approved project goes beyond repair and maintenance to instead constitute redevelopment. On that issue, the staff report goes into extensive detail as to the basis for staff's characterization of the project as redevelopment, including due to significant foundation and other work (see staff report pages 11-15). To summarize the extent of the proposed work here, the project would allow for 100% replacement of the foundation, floor, and roof elements, as well as new electrical, mechanical, and plumbing systems, exterior siding, windows, doors, trim, gutters, and deck. For the guest cottage the proposed work entails new foundation, bathroom, exterior siding, doors, windows, trim, roof, and gutters. The proposed project also entails a new retaining wall and fence. (See Id. at p. 14.)

The Applicants' representative here now suggests that the project is a 'remodel', but heretofore both the City and the Applicants have repeatedly asserted (even within the Applicants' representative's attached October 27, 2016 letter) that the new foundation and seismic improvements (including new lateral elements and a new diaphragm transfer system) are being proposed for the purpose of health and safety, and both cite health and safety reasons as the basis for proposing and allowing these elements of the project under the LCP. However, the LCP's definition of "remodel" states "[t]o renovate or add on to a structure *for purposes other than health or safety*." (IP Section 24.22.643; emphasis added). In other words, a 'remodel' is expressly for purposes *other than* health and safety. The Applicants' representative appears to

want to be able to argue the project is both a remodel *and* necessary for health and safety, which is contrary to the LCP.

To summarize the discussion of the redevelopment issue in the Staff Report, the City's approval of this project expressly acknowledged that the extent of foundation replacement and new lateral elements go beyond "normal and routine maintenance," yet declined to acknowledge the new foundation and lateral elements as redevelopment. (*See* Staff Report, pages 11-12.) Instead, the City used its own threshold for defining redevelopment based on 50% of exterior wall replacement, which threshold is not based in the LCP and is further inconsistent with other recent Commission actions throughout the State defining redevelopment to include substantial foundation work. (*See Id.* at p. 13-14.)

Considering the above, Staff continues to maintain that the City-approved project raises substantial issues deserving of the Commission's review.

## **2. Reference to other Pertinent LCPs**

The Applicants' representative's letter also takes issue with the staff report's reference to recent examples of how the Commission has approached the issue of "redevelopment" in the context of blufftop single family dwellings, including examples of recent LCP actions in Solana Beach and Marin County. The Commission's approach in these cases is relevant as these are LCP's that did not define at what point the scope of work for a given project went beyond repair and maintenance but rather constituted significant enough development that the entire structure needed to be evaluated against all applicable LCP policies, including related to hazards. The Santa Cruz LCP does not expressly define the threshold for redevelopment, and thus the staff report identifies those cases to provide guidance in the present situation. For example, in recent LCP decisions, including for Solana Beach, the Commission defined "redevelopment" as the point at which additions and expansions, or any demolition, renovation or replacement, result in alteration or reconstruction of 50% or more of an existing structure. The point in discussing these LCPs in this case was to provide context to understand how the Commission has dealt with similar issues in other cases, with the ultimate purpose of demonstrating that the City's evaluation of whether the proposed project constitutes redevelopment when it approved the project raises a Substantial Issue with respect to the LCP when considered along with the Commission's evaluation of this issue in other coastal jurisdictions across the State.

## **3. LCP Interpretation Questions**

The Applicants' representative's letter takes issue with staff's interpretation of the IP's nonconforming use/structure ordinance. The staff report includes an evaluation of the City's application of IP Sections 24.18.020(6) and 24.18.080(3), both of which provide distinct bases for finding Substantial Issue. The premise for finding Substantial Issue on the basis of the City's application of these two IP provisions is that the non-conforming regulations implicate internal inconsistencies and require Commission interpretation, and that the issues presented here suggest that the Commission should further evaluate the project on *de novo* review (see staff report pages 11-15 for further discussion of this point). The staff report does not attempt to make definitive determinations on LCP consistency or inconsistency; rather the staff report contains a threshold evaluation as to whether the Commission should find a Substantial Issue at all. Staff continues to maintain that there are several Substantial Issues involved with this project, including related to



uncertainties and different possible interpretations of the City's nonconforming ordinance and that given the significance of the coastal resources at stake, the Commission should have the opportunity to further review the project, as allowed for and envisioned by the Coastal Act.

#### **4. Proposed Work is a Remodel**

See above discussion of remodel versus redevelopment.

#### **5. Whether Red-Tagging is Required**

The Applicants' representative's letter indicates that staff suggests a red-tag is a requirement for meeting certain non-conforming regulations. However, such observation incorrectly frames staff's observations on this point, which were merely to identify the findings made by the assistant building official in his email and to raise the issue of whether the assistant building official's email was sufficient for the purposes of what the LCP requires per IP Section 24.18.020(6) (as discussed on page 13 of the staff report). Staff's inquiry as to the threshold for triggering IP Section 24.18.020(6) is incorporated into the staff report simply for the purpose of determining whether a Substantial Issue exists with respect to application of IP Section 24.18.020(6) to the present situation.

#### **6. None** (The Applicants' representative's letter skips number 6.)

#### **7. Unpermitted Shoreline Armoring**

The Applicants' representative's letter takes issue with staff's characterization of the existing shoreline armoring as unpermitted. Specifically, the Applicants dispute that the armoring is unpermitted and also state that the appeal did not specifically allege that the armoring was unpermitted. The Applicants also assert that the Commission cannot find Substantial Issue on the basis of disputed facts. First, nothing in the Coastal Act limits the ability of the Commission to find Substantial Issue based on disputed factual allegations, and the fact that further investigation is warranted is often the basis for finding Substantial Issue in and of itself.

Moreover, the project background and history section of the staff report provides a detailed basis for staff's position that the armoring installed in 1982-83 was not permitted, the most notable of which is the fact that the application for such work was never filed nor was the work ever approved by the Commission through a regular coastal development permit (see Staff Report pp. 6-7). The evidence forming the basis of this position includes permit application files 3-83-152 and 3-92-78, both of which are referenced in the staff report and are part of the substantive file.

Secondly, while the appeal does not specifically allege that the armoring is unpermitted, the appeal does raise issues regarding the site's geotechnical stability and the project's consistency with the Shoreline Protection Overlay and public access and public view protection policies of the LCP, all of which are implicated (and adversely impacted) by the unpermitted shoreline armoring. Moreover, staff believes that there is no way to fairly evaluate concerns regarding hazards without identifying the unpermitted armoring, especially given that the City's approval did not include an analysis of the armoring (including how such armoring may affect public access) and did not evaluate an appropriate hazards setback for the to-be-redeveloped residence.

For the reasons described above, the staff report is reasonably justified in discussing the shoreline armoring in the Substantial Issue portion of this appeal.

**8. 1992 Administrative Permit for 300 cubic yard addition**

Finally, the Applicants' representative's letter asserts that the administrative CDP 3-92-78 authorized the shoreline armoring installed in 1982-83. However, staff reiterates that no evidence was located in the Commission's files that the Commission ever authorized the original shoreline protection that was installed prior to 1992, nor was any evidence located in the Commission's files of any Commission staff verbal authorizations for same (which would not, even if it existed, be enough to validly authorize a CDP given that the Commission must authorize the CDP). Rather, CDP 3-92-78 only authorized 300 cubic yards of rip-rap. The fact that the 300 cubic yards of rip-rap was installed at a location where unpermitted shoreline protection already existed does not change the scope of the work/development that was proposed and approved under CDP 3-92-78, which was limited to 300 cubic yards of rip-rap, all as discussed in the staff report on pages 7-8.

Attachment

RECEIVED

OCT 31 2016

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST DISTRICT OFFICE

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**By Electronic and Regular Mail**

October 27, 2016

Mr. Ryan Moroney  
Supervising Coastal Planner  
California Coastal Commission  
Central Coast District Office  
725 Front Street, Suite 300  
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Ryan.Moroney@coastal.ca.gov

Re: Appeal No. A-3-STC-16-0016 of Coastal Development Permit No. CP15-0157 to remodel single-family residence at 1307 West Cliff Drive  
Appeal Staff Report: Substantial Issue Determination (W14a-11-2016)

Dear Mr. Moroney:

I write in response to the Appeal Staff Report: Substantial Issue Determination ("Staff Report" or "Report") that concludes a substantial issue exists with respect to Appeal No. A-3-STC-16-0016.

The homeowners, Shigefumi and Amy Honjo (the "Honjos"), previously submitted two letters explaining why there is no substantial issue, one from Deidre Hamilton, their consultant, and one from David Ivester of our firm. Although the Honjos disagree with much more than we address below, our aim is not to repeat the discussions set out in prior letters, but rather to highlight certain errors in the Staff Report that call for correction or explanation.

**1. The City Issued A Remodel Permit, Not A Redevelopment Permit.** In its opening line and repeatedly thereafter, the Report mischaracterizes the proposed project as "redevelopment" of a residence. Actually, the Honjos applied for, and the City issued, coastal development and design permits to "remodel" a residence. Even if the staff wants to argue that the project should be treated as redevelopment, it should at least objectively describe the applicant's application and the City's permits. The Report's failure to do so and its recharacterization of the project is presumptuous at best and erroneous at worst.

**2. What Do The Marin And Solano LUPs Have To Do With The City Of Santa Cruz?** The Report asserts that "the City's interpretation [of its ordinance] is not

consistent with recent Commission actions defining redevelopment, which have generally included substantial foundation work in the definition of redevelopment.” (Staff Report at p. 14.) The Report cites as examples the Marin and Solano Beach Land Use Plans. (*Id.*) But the Report does not explain what the Marin and Solano Beach Land Use Plans have to do with the City of Santa Cruz’s Local Coastal Program, Land Use Plan, or nonconforming use ordinance.

**3. The Report’s Interpretation Conflicts With City Code.** Although the Report indicates that “recent Commission decisions” bar one from retaining legal nonconforming status when replacing a foundation—even for well-documented safety reasons—the Report does not explain how this interpretation is valid notwithstanding the conflict it creates with City Code section 24.18.020(6). That section provides:

*Nothing* in [the Nonconforming Uses and Structures Chapter] shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official.

(Emphasis added.) An ordinance generally must be construed “so as to avoid rendering superfluous any parts thereof.” (*Astoria Federal Savings & Loan Ass’n v. Solimino* (1991) 501 U.S. 104, 112.) But if the Report’s interpretation were adopted, it could not be reconciled with the requirement that allows a foundation to be strengthened or restored when the building official declares it unsafe. The interpretation you describe, if applied in the manner you describe, would effectively write section 24.18.020(6) out of the City Code by rendering superfluous the “[n]othing . . . shall prevent” language.

**4. The Proposed Work Is A Remodel Under The City’s Interpretation.** The Report contends that because “the proposed redevelopment includes new foundations for both the house and cottage,” the proposed work “constitutes new development even under the City’s interpretation.” (Staff Report at p. 16.) But the Report does not explain this contention. The City made findings on this point, which come to the opposite conclusion. (E.g., Staff Report ex. 5 at pp. 19-20.) The Report offers no reason why those findings should be disregarded.

**5. “Reg-Tagging” Is Not Required And Would Put Lives At Risk.** The Report asserts “it is unclear whether the LCP requires a more formal ‘declaration’ by the Building Official (i.e., red-tagging) in order to take advantage of the exception provided by IP Section 24.18.020(6) to strengthen or restore an unsafe building condition.” (Staff Report at 13.) The LCP though says nothing about requiring “red-tagging” for this purpose. Why the Report supposes this is unclear and why it suggests such a requirement is unexplained. It moreover implicates important health and safety concerns. For instance, if homeowners

BRISCOE IVESTER & BAZEL LLP

Mr. Ryan Moroney

October 27, 2016

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had to wait until conditions were so dangerous to warrant a "red-tag," there would be in effect a policy that required homeowners to live in unsafe conditions for an unknown length of time before they could rightfully seek to remediate the danger. Another problem is that while some structures may be livable during everyday conditions, they may still pose grave risks during earthquake conditions. Because homeowners should not have to gamble with their safety in order to restore unsafe conditions, the City Code should not be interpreted to include a "red-tag" requirement.

**7. The Rip Rap Is Permitted And Cannot Be Grounds For Substantial Issue.**

The Staff Report declares throughout that the rip rap is unpermitted. But it fails to support that claim with any citation to evidence.

Moreover, the Report bases substantial issue determinations on these uncorroborated factual assertions about the rip rap permitting. (Staff Report at pp. 15, 18.) This is inappropriate because substantial issue determinations should not be based on much-disputed factual allegations. Likewise, because Appellants did not contend the rip rap was unpermitted, and because substantial issue determinations should be based on issues raised by the Appellants, it is inappropriate to include these determinations in the Staff Report. The proper place to sort out these factual issues is in a separate proceeding.

**8. The Record Shows Staff In 1992 Was Aware Of The 1983 Work And Intended The Entire Rip Rap Revetment To Be Permitted.** The Report states "the record indicates that Commission staff [in 1992] was unaware that the 198[3] unpermitted work had not been permitted, and thus the Commission's CDP did not evaluate or approve the 198[3] work." Yet it cites nothing in the record to support this assertion. Where does the record "indicate" this? As far as we are aware, the "record" actually indicates the opposite: Commission staff knew of and provided verbal authorization for the 1983 work, and then issued a written permit in 1992 for the entire rip rap revetment. (Staff Report, ex. 9 at pp. 111-166.)

Thank you for your consideration of these issues. We think they warrant the staff's attention—and correction or explanation—before or at the significant-issue hearing.

Sincerely,

BRISCOE IVESTER & BAZEL LLP



Max Rollens

W14a

**RECEIVED**

OCT 28 2016

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

AGENDA NUMBER: W 14a  
APPLICATION NUMBER: A-3-STC-16-0016

NAME: Gillian Greensite  
POSITION: Opposed to Project

Dear California Coastal Commissioners:

I regret that I am unable to attend the public hearing in Half Moon Bay for this appeal. November 2<sup>nd</sup>. is the date allotted me by the US Citizenship and Immigration Services for the interview and test to determine my application for Naturalization. I have waited 6 months for a date for this interview. Unfortunately it conflicts with your meeting and this agenda item. Re-scheduling my USCIS appointment would start the process anew.

I did speak in front of the local government body in opposition to this project and therefore request that you consider my comments in writing, given that I am unable to attend in person.

A summary of my concerns is below:

1. This is a legal, non-conforming structure and as such can legally have minor repairs made but not a reconstructed, heavily engineered, essentially new building, which is proposed. The proposal is to take the building down to one wall of studs, excavate and build a new foundation and rebuild a new house. My understanding is that such a level of new construction violates the essence of what is permitted for a legal, non-conforming structure.
2. The current house is the only structure on the ocean side of the roadway called West Cliff Drive. It is of historic and cultural value to the city of Santa Cruz. While not listed in any historic register it is non-the-less appreciated as such by locals and visitors alike. The newly proposed structure bears little resemblance to the original. It certainly does not improve the view-shed as claimed.
3. The claim that the foundation needs replacing is largely based on the load requirements of the proposed new building, according to the applicants' engineer. The digging and soil disturbance that would accompany a new foundation presents potential erosion and soil stability problems on this ever-eroding ocean bluff. If the current building is maintained, minor infilling any cracks in the current foundation would most likely be adequate.
4. The extensive ground disturbance proposed may impact heritage trees on site and impact the public access next to the property.

In sum, this project seems clearly to raise substantial Local Coastal Program conformance issues. Thank you for considering these concerns.

Gillian Greensite

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# W14a

Appeal Filed:	2/2/2016
49th Day:	Waived
Staff:	Ryan Moroney - SC
Staff Report:	10/21/2016
Hearing Date:	11/2/2016

## APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

<b>Appeal Number:</b>	<b>A-3-STC-16-0016</b>
<b>Applicants:</b>	<b>Shigefumi and Amy Honjo</b>
<b>Appellant:</b>	Jack Zajac
<b>Local Decision:</b>	Approved by the City of Santa Cruz Zoning Administrator on January 6, 2016 (CP 15-0157).
<b>Project Location:</b>	1307 West Cliff Drive, between West Cliff Drive and the sea (APN 003-284-05).
<b>Project Description:</b>	Redevelopment of blufftop house and guest cottage located on the seaward side of West Cliff Drive in the City of Santa Cruz. Redevelopment includes new foundations (and raising the existing residential structures six inches); new electrical, mechanical and plumbing systems; new windows, doors, trim, siding, copper gutters, and roofing; extension of front porch area and removal of dormers; and installation of a retaining wall along the driveway.
<b>Staff Recommendation:</b>	Substantial Issue Exists

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**Important Hearing Procedure Note:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. (14 CCR § 13115(c).) If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the

discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. (*Id.* § 13117.) Others may submit comments in writing. (*Id.*) If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (*Id.* § 13115(b).)

## **SUMMARY OF STAFF RECOMMENDATION**

The City-approved project is located on an oceanfront, blufftop parcel and is the only residence on the seaward side of West Cliff Drive in the City of Santa Cruz along a distance of approximately 2.5 miles. In addition to serving as a vehicular roadway, West Cliff Drive is also heavily used as a bike and pedestrian segment of the California Coastal Trail (CCT), with otherwise unobstructed views of the ocean across the Monterey Bay National Marine Sanctuary. The existing residence sits on a bluff that is reinforced by partially unpermitted riprap placed at its toe in the early 1980s. The parcel is currently zoned Ocean Front Recreational (OF-R) which does not allow for single family dwellings (though at the time it was built the parcel was zoned for single family dwellings, prior to LCP certification), and therefore the existing house is a legal nonconforming structure and use. The parcel also is currently zoned with Shoreline Protection and West Cliff Drive overlays, the LCP objectives of which are to ensure the protection of coastal resources and views, and to enhance public access.

The City-approved project allows for the redevelopment of the existing main house and guest cottage, landscaping, and a new driveway retaining wall. Specifically, the redevelopment of the main house includes a new foundation, which will raise the structure by six inches, a new seismic system with new lateral elements and support on the floors and roofs, new electrical, mechanical, and plumbing systems, and new exterior elements. The guest cottage will also have a new foundation, convert the closet to a full bathroom, add a 65-square-foot covered porch, as well as new exterior elements.

The Appellant contends that the City-approved project raises LCP conformance issues and questions with respect to the LCP's nonconforming use/structure ordinance, as well as the requirements of the Shoreline Protection, West Cliff Drive, and Coastal Zone overlay zones. With respect to the nonconforming structure/use ordinance, the Appellant's argument is centered on the fact that residential use is not permitted in the OF-R zoning district, and that the City-approved redevelopment is designed and engineered for longevity as opposed to basic repair and maintenance for the legal nonconforming structures, which is generally the only type of alterations to legal nonconforming structures that can be made per the LCP's requirements. The Appellant also raises concerns regarding the City-approved redevelopment's impact to coastal hazards, coastal views, and public access.

The overarching purpose of the IP's nonconforming use and structure standards is to provide "for the control, improvement, *and termination* of uses or structures which do not conform to the regulations of this title for the district in which they are located" (emphasis added). However, the City-approved project will result in the indefinite continuation of the nonconforming residential structures and uses at this critically important oceanfront, blufftop location, particularly with respect to the approved foundation improvements. Furthermore, the project allows for a complete



redevelopment of the residence, including a new foundation, new exterior siding, a new roof, and a new deck. The City-approved redevelopment project goes well beyond repair and maintenance of the existing nonconforming development. Therefore, the City-approved project furthers the life of the residence and makes the use more nonconforming by extending the life of the structure indefinitely. Such approval raises substantial questions regarding LCP consistency that require evaluation by the Commission for development at this critical location.

With regard to the issue of coastal hazards, the City did not adequately analyze the issue of coastal hazards or bluff setbacks for the redeveloped house or cottage, despite the fact that the residence currently sits on an eroding bluff protected by substantial existing and primarily unpermitted armoring. In fact, the City did not analyze whether the redevelopment could meet LCP policies addressing hazards, including in terms of identifying appropriate setbacks and related measures for development approved on bluffs. The project raises significant statewide issues related to redevelopment in areas subject to coastal hazards, including related to existing armoring (the bulk of which is unpermitted in this case). These are compounded by the fact that the residential development in this case is nonconforming, where the objectives of this LCP would suggest it may be inappropriately located in the first place. These too are substantial issues deserving of the Commission's evaluation.

Finally, with respect to public views and access, the proposed redevelopment will not enhance the visual quality of the area or blend harmoniously with the ocean and the sky as viewed from West Cliff Drive, including because it perpetuates the only residence on the seaward side of West Cliff Drive, thereby blocking what would otherwise be open coastal views. Furthermore, on the issue of public access, the City's approval also failed to address the substantial shoreline protection work that significantly impedes public access on the beach. Such issues also suggest Commission evaluation of the project is necessary.

In short, the City's approval authorizes the significant redevelopment of a residence on an oceanfront, blufftop site where residences are not allowed, where it is the only residence along the seaward side of a critically important public access and recreational segment of the CCT, and where it is being protected by existing shoreline protection, the bulk of which is currently unpermitted. For these reasons, staff believes that the City's approval raises substantial LCP conformance issues related to core Coastal Act and LCP coastal resource protection requirements, and staff recommends that the Commission find substantial issue and take jurisdiction over the CDP application for this project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to effect this recommendation are found on page 5.

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### EXHIBITS

- Exhibit 1 – Regional Location Map
- Exhibit 2 – Aerial (Coastal Records Project)
- Exhibit 3 – Existing Residence Photos
- Exhibit 4 – Project Plans
- Exhibit 5 – City’s CDP Action
- Exhibit 6 – Appeal of City’s CDP Action
- Exhibit 7 – Applicable LCP Policies and Standards
- Exhibit 8 – Commission Staff’s 1/5/2016 letter to City Zoning Administrator
- Exhibit 9 – Applicants’ Correspondence

## I. MOTION AND RESOLUTION

### Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a future de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-STC-16-0016 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-STC-16-0016 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### A. PROJECT LOCATION

The City-approved project is located on an oceanfront, blufftop parcel at 1307 West Cliff Drive, and is the only residence located seaward of West Cliff Drive in the City of Santa Cruz, a distance of some 2.5 miles. In addition to serving as a vehicular roadway, West Cliff Drive is also heavily used as a bike and pedestrian segment of the California Coastal Trail (CCT), with otherwise unobstructed views of the ocean across the Monterey Bay National Marine Sanctuary.<sup>1</sup> The existing residence sits on a bluff that is partially reinforced by riprap at its toe. This riprap, most of which is unpermitted, was placed in the early 1980's.

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<sup>1</sup> According to the City's Draft West Cliff Drive Management Plan: "West Cliff Drive and the adjacent multi use bicycle-pedestrian path way are both publicly owned facilities within the City's right-of-way. Access to the coastal bluffs and views of the Monterey Bay National Marine Sanctuary extend along the entire reach of West Cliff Drive from Natural Bridges State Park to the Municipal Wharf/Main Beach area. Both West Cliff Drive and the path are significant attributes of the City of Santa Cruz, providing residents and visitors alike with numerous coastal related recreational activities. The road and adjacent path provide public access to the pocket beaches along West Cliff Drive as well as opportunities for walking, jogging, biking and skating along the coastal bluffs. West Cliff Drive provides access for surfers and beach patrons as well as access to Natural Bridges and Lighthouse Field State Parks. West Cliff Drive and the multiuse path help define the character of Santa Cruz and provide a quintessential "Santa Cruz" experience for residents and visitors who enjoy a high degree of public access to the adjacent coastal resources."

The parcel is zoned as Ocean Front Recreational (OF-R), which does not allow for single-family dwellings (though at the time it was built the parcel was zoned for single-family dwellings, prior to LCP certification), and therefore the existing house is a legal nonconforming structure and use. The parcel is also zoned with Shoreline Protection (SPO) and West Cliff Drive (WCDO) overlays, of which the LCP objective is to ensure the protection of coastal resources and views, and to enhance public access along this stretch of coast. See **Exhibit 1** for a location map and **Exhibit 2** for an aerial of the site, and **Exhibit 3** for photos of the site.

## **B. PROJECT BACKGROUND AND HISTORY**

The subject property is currently developed with a single-family dwelling and a guest cottage that were both built around 1940 when the parcel was zoned Residential (R-1). Based on research conducted to date, the City rezoned the subject property from R-1 to OF-R sometime between 1954 and 1970.<sup>2</sup> On July 8, 1977, the prior property owner, Dr. Larimore Cummins,<sup>3</sup> applied to the City to rezone the property from (OF-R) to Residential (R-1-5).<sup>4</sup> The purpose of the rezoning request was essentially to eliminate the then-existing legal nonconforming restrictions on the property, including then Municipal Code Section 24.52.010, which stated that “Any non-conforming use within the City of Santa Cruz is detrimental to the orderly development of the City and detrimental to the general welfare of persons and property. It is the intent of this chapter that non-conforming uses shall be eliminated as rapidly as may be done.”

On August 3, 1977, the City Planning Commission denied the rezoning application by unanimous vote. The resolution of denial found that the proposed rezoning would “not serve the public necessity and promote the public convenience and general community welfare, and is not in general conformance with the principles and policies set forth in the General Plan.” The meeting minutes also included comments from the Planning Commissioners, including that “the intent of the OF-R was that eventually all non-conformities would disappear.” Also included in the record before the Planning Commission was a letter from the West Cliff Advisory Committee (then commonly known as the Bike Path Committee) opposing the application on the basis that the proposed rezoning: 1) could open the door to additions or alterations, which would further block the view and detract from the oceanfront appeal of the bicycle path; 2) would constitute a “dangerous precedent;” and 3) may not be in conformity with the Coastal Act.<sup>5</sup>

Dr. Cummins appealed the Planning Commission’s denial to the City Council. The City staff report to the Council noted that the OF-R zoning was established prior to 1970 and that its purpose is “[t]o ensure the safe occupancy and the reasonable use of lands subject to continuous erosion, such as the cliffs and beaches adjacent to the Santa Cruz shoreline. Changes of zoning from OF-R to any other zoning district shall be made only in general accordance with the General Plan.” The staff report also noted that a request was made in 1973 to modify the OF-R

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<sup>2</sup> City records include a denial of a 1954 Use Permit application to run an antique shop in the home, but the application indicated the zoning for the parcel was R-1.

<sup>3</sup> Dr. Cummins owned the property until it was sold to the current Applicants in July of 2014.

<sup>4</sup> Based on current research, it is unclear when Dr. Cummins purchased the property; however, minutes from the August 3, 1977 City Planning Commission meeting indicate that he was aware of the OF-R zoning designation (and restrictions) when he purchased the property.

<sup>5</sup> The Coastal Act had just come into effect on January 1, 1977. The City did not have a certified LCP in 1977.

regulations to permit limited enlargement or reconstruction of existing structures in this zone, which was denied by the City Council. City staff's preliminary recommendation to the City Council in 1977 with respect to Dr. Cummins' rezoning request was the following:

*To break in the OF-R Zone to permit further development along the south side of West Cliff Drive would be, in the Staff's opinion, a major policy decision with which we cannot agree. The applicant presently enjoys the use of the property and reasonable maintenance of this dwelling is also assured. Staff recommends denial of the rezoning request. • The Applicant is not being denied use of his property. This restriction was on the property when he purchased it.*

At its August 23, 1977 meeting, the City Council referred the matter back to the Planning Commission with direction to work out an acceptable alternative.

On December 7, 1977, the Planning Commission again took up the matter. As a compromise solution, City staff recommended that the Planning Commission approve a proposed text amendment to the OF-R zone to allow for reconstruction of the existing single-family structure in the case of a natural disaster, but to otherwise deny the rezoning request. The Commission approved the text amendment (by a vote of 3-2) and denied the rezoning (by a vote of 5-0).

The text amendment (Ordinance 78-02) to the OF-R zone district was subsequently approved by the City Council on January 24, 1978. This amendment allowed for reconstruction of any single-family dwelling existing as a nonconforming use in the OF-R district if more than 60 percent of such building's market value was damaged by fire, flood, or other "act of God." The ordinance also required that the rebuilt "structure's location, size, height, external design, area, and other external specifications will be substantially similar in all significant respects to such specifications before the structure was damaged..." The application for rezoning was thereafter withdrawn and no further efforts were made to rezone the property. Although approved locally in 1978, this ordinance text was not included as part of the City's Local Coastal Program (LCP) when it was certified in 1985.<sup>6</sup>

In 1982, in the wake of some severe El Niño storms, Dr. Cummins installed substantial shoreline armoring on the beach and bluff at the subject location, including a gabion key and approximately 850 tons of riprap, in order to protect his residence. The current owners/Applicants assert that the shoreline protection work was done under a verbal emergency authorization from Coastal Commission staff, though no written documentation has been identified to substantiate this claim, and Commission staff have not been able to corroborate that staff was involved at all. Although Dr. Cummins did submit a CDP application (CDP Application No. 3-83-152) seeking after-the-fact authorization for the placement of the gabion key and 850 tons of riprap in the subject location, the application was deemed incomplete by Commission staff and was never filed. In other words, Dr. Cummins never provided the information needed to complete the application and thus no CDP was ever issued to authorize the

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<sup>6</sup> A "Preliminary Plan Review" from the City to the Applicant states that this section was in the Zoning Ordinance until January of 1985 when an entirely new Zoning Ordinance was adopted for the City's Coastal Commission-adopted LCP Implementation Plan (IP), and that the City was unable to locate any documentation as to the reason behind the deletion of this section; however, the former City Senior Planner during that time stated that it likely was deleted because it did not meet Coastal Act requirements.

placement of the gabion key and 850 tons of riprap on the beach fronting the residence. Thus, even assuming that Dr. Cummins did obtain verbal emergency permit authorization from Coastal Commission staff to place the shoreline protection work on a temporary basis (and there is no evidence to suggest same), the armoring never received an actual Emergency CDP nor a regular CDP as required. Thus, the gabion key and 850 tons of riprap have been retained without benefit of a CDP for over three decades, and are currently considered a violation of the Coastal Act.<sup>7</sup>

In 1992, Dr. Cummins applied for a different CDP to place an additional 300 cubic yards of riprap at the site (CDP Application No. 3-92-78). That CDP was ultimately approved, and Dr. Cummins placed 300 cubic yards of riprap per the permit. At that time, the record indicates that Commission staff was unaware that the 1982 unpermitted work had not been permitted, and thus the Commission's CDP did not evaluate or approve the 1982 work. Thus, 300 cubic yards of riprap has been legally permitted at the site, and the remainder of the armoring remains unpermitted.

The Applicants purchased the property in July of 2014 from Dr. Cummins and submitted an application to redevelop the existing structures to the City in September of 2015. Commission staff met with City staff to discuss the project, including with respect to concerns regarding the unpermitted shoreline protection work. Commission staff also submitted comments to the Zoning Administrator outlining staff's concerns with respect to the project's consistency with the OF-R Zoning designation, the Shoreline Protection Overlay, the West Cliff Drive Overlay, and the unpermitted shoreline protection work (see **Exhibit 8**). Notwithstanding the significant issues raised by Commission staff at that time, the Zoning Administrator proceeded to approve the project on January 6, 2016.

### **C. CITY OF SANTA CRUZ APPROVAL**

On January 6, 2016 the City of Santa Cruz Zoning Administrator approved a CDP for substantial redevelopment of the residence and guest cottage at 1307 West Cliff Drive. The City's Final Local Action Notice was received in the Coastal Commission's Central Coast District Office on Friday, January 22, 2016 (see **Exhibit 5**). The Coastal Commission's ten-working-day appeal period for this action began on Monday January 25, 2016 and concluded at 5pm on February 5, 2016. On February 2, 2016, Jack Zajac filed a valid appeal to the Coastal Commission (see **Exhibit 6**).

### **D. PROJECT DESCRIPTION**

The City-approved project allows for the substantial redevelopment of the existing main house and guest cottage, landscaping, and a new driveway retaining wall. The redevelopment of the main house includes: a new foundation, which will raise the structure by six inches; a new seismic system with new lateral elements and a new diaphragm transfer system (i.e. new

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The Commission's enforcement unit is investigating, including identifying next steps for resolution (Commission Enforcement Case No. V-3-15-0124).

structural supports) in the floors and roof;<sup>8</sup> removal of the fireplace and chimney; new electrical, mechanical, and plumbing systems; new windows, doors, trim, siding, copper gutters, and roof; new air and water barriers on exterior walls; extension of the front porch area; removal of dormers; and a new deck located one foot above grade with stairs to the back yard area. The redevelopment of the guest cottage includes a new foundation; conversion of the closet to a full bathroom; the addition of a 65-square-foot covered porch; removal of the existing bathroom pop-out; new French doors, windows, trim, siding, copper gutters, and roof; and new air and water barriers on exterior walls. On both the main house and the guest cottage, a Japanese torching method called *shou sugi ban* would be used to finish the wood. The process acts as an additional weather retardant and would slightly darken the wood siding. Also, the new windows would have decorative wood shutters, and the new roofs would have cedar shingles with copper flashing.

The City-required landscaping plans would include removing the existing non-native plants and replanting with native coastal bluff meadow plants, repairing an existing stake fence, restoring the gravel and crushed granite pathways, removing the lawn and planting no-mow grass,<sup>9</sup> planting three new canopy fruit trees, relocating the existing fire-pit and seating, installing a new safety fence along the bluff edge, planting new native flowering perennials, and trimming the existing cypress and eucalyptus trees. The City's approval also authorizes a new retaining wall around the outer edge of the existing driveway to prevent the existing West Cliff Drive storm drain from causing erosion of the driveway.

See **Exhibit 4** for the City-approved project plans and photo simulations, and **Exhibits 2 and 3** for site area photos.

## E. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval

<sup>8</sup> In structural engineering, a diaphragm is a structural element that transmits lateral loads to the vertical resisting elements of a structure (such as shear walls or frames). Diaphragms are typically horizontal, but can be sloped such as in a gable roof on a wood structure or concrete ramp in a parking garage. The diaphragm forces tend to be transferred to the vertical resisting elements primarily through in-plane shear stress. The most common lateral loads to be resisted are those resulting from wind and earthquake actions, but other lateral loads such as lateral earth pressure or hydrostatic pressure can also be resisted by diaphragm action. The diaphragm of a structure often does double duty as the floor system or roof system in a building, or the deck of a bridge, which simultaneously supports gravity loads.

<sup>9</sup> "No-mow" grass generally refers to an ecological alternative to the traditional high resource-input lawn. "No mow" lawn grass grows in sun and shade, and also performs well as a footpath or border with moderate traffic. Once established "no mow" can form a lush green carpet of grass that requires little, if any, watering or mowing.

or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of a beach, and within 300 feet of the seaward face of a coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question (should the Commission vote to hear public testimony on the substantial issue question) are the Applicants (or their representatives), persons who opposed the project and made their views known before the local government (or their representatives), and the local government (Pursuant to California Code of Regulations (CCR) Section 13117). Testimony from other persons regarding substantial issue must be submitted in writing (again, see CCR Section 13177). Any person may testify during the de novo CDP determination stage of an appeal.

## **F. SUMMARY OF APPEAL CONTENTIONS**

The Appellant contends that the City-approved project raises substantial LCP conformance issues and questions with respect to the LCP’s nonconforming use/structure, Shoreline Protection Overlay zone, Coastal Zone Overlay zone, and West Cliff Drive overlay zone standards. Specifically, the Appellant contends that the City’s approval: 1) would degrade the public viewshed by redeveloping a residence that is not an LCP-allowable land use in this visually prominent oceanfront site; 2) did not adequately address hazards at the site; and 3) raises public access issues due to the new driveway and retaining wall. See **Exhibit 6** for the full appeal text.

## **G. SUBSTANTIAL ISSUE DETERMINATION**

### **Substantial Issue Background**

The term substantial issue is not defined in the Coastal Act. The Commission’s regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (CCR Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government’s decision that the development



is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate (pursuant to Code of Civil Procedure, Section 1094.5).

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the City presents a substantial issue.

### **Substantial Issue Analysis**

#### *Ocean Front Recreation (OF-R) Zoning/Nonconforming Use*

The Appellant contends that the project is inconsistent with the LCP's nonconforming use ordinance, including that: 1) the proposed work goes beyond what can be permitted as normal and routine maintenance under that ordinance; and 2) that the proposed redevelopment project is designed and engineered for longevity, which is not consistent with the ordinance's overarching objective to "terminate" nonconforming uses and structures.

The City's nonconforming use/structure ordinance is part of the certified LCP (IP Section 24.18.010). The overarching purpose of the ordinance "is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this title for the district in which they are located." In order to achieve this end, the ordinance generally limits the scope and extent of allowable alterations to nonconforming structures to normal and routine maintenance for the purpose of preserving its "existing condition" (IP Section 24.18.080(1)), but allows for limited alterations to "improve livability" for nonconforming residential uses (IP Section 24.18.080(3)). **See Exhibit 7** for the full text of all cited LCP standards.

The parcel is zoned Ocean Front Recreation (OF-R), and is located within the Shoreline Protection Overlay (SPO) and West Cliff Drive Overlay (WCDO) zones. The purpose of the OF-R zoning district is "to ensure the protection of coastal resources and views; to provide public access and maintenance of public use; to assure that coastal development is consistent with the Coastal Land Use Plan and General Plan; and to promote the safe occupancy and the reasonable use of lands subject to continuous erosion, such as coastal cliffs and beaches." (IP Section 24.10.1900). This zoning district is applied to the entirety of the West Cliff Drive promenade, and serves to foster the recreational trail that fronts the City's western bluffs and beaches. Importantly, residential use is not a permitted use in this zoning district, and single family dwellings are not allowed (IP Section 24.10.1910-20). In addition, the purpose of the SPO zone (IP Section 24.10.2400) is "to preserve and protect the coastal and environmental resources in the city of Santa Cruz. It is furthermore intended that the Shoreline Protection Overlay District accomplish the following: minimize cut, fill, earthmoving, riprap placement, grading operations, and other such man-made intrusions in coastal areas; to control erosion; to protect development from geological or other coastal related hazards; to protect public views; to protect and enhance

shoreline access for the public; to protect paleontological resources; to generally implement the policies of the Local Coastal Land Use Plan. This district lies generally between the sea and the first public road paralleling the sea, or within three hundred (300) feet of the mean high tide line of the sea, whichever is the greater distance.” And the purpose of the WCDO zone (IP Section 24.10.4200) is “to promote quality residential development on and adjacent to West Cliff Drive that positively enhances the public space or realm along West Cliff Drive. The West Cliff Drive Overlay District will preserve, protect and enhance West Cliff Drive as an important social and environmental city and community space; reinforce the residential neighborhood character of the north side of West Cliff Drive; preserve the public view toward the ocean from streets which intersect with West Cliff Drive; and enhance the streetscape by requiring landscaping and modulation of building forms on buildings facing West Cliff Drive.” Thus, the existing residence is nonconforming with respect to the standards of the OF-R zoning district, as well as the SPO and WCDO zones.

The City’s staff report made detailed findings with regard to the project’s consistency with the various technical requirements of the nonconforming use ordinance; including, for example that there would be no expansion of use or footprint of the main buildings. The City found that the project could be approved because it was mostly ‘normal and routine maintenance’ whose purpose was ‘preserving the existing condition’ and ‘improv[ing] livability’ as is allowed for nonconforming structures (see LCP Sections 24.18.080(1), (3) in **Exhibit 7**). The City determined that the foundation work went beyond normal and routine maintenance, but found this also allowable because it found the foundations ‘unsafe,’ which can be corrected for nonconforming structures (see LCP Section 24.18.020(6) in **Exhibit 7**). The City’s analysis arguably provides a reasonable interpretation of the nonconforming use and structure ordinance, and the Applicants’ land use consultant and attorney each submitted further information and materials that essentially support and reiterate these findings (see **Exhibit 9**).

However, despite the reasonableness of the City’s interpretation here, the City’s approval still raises legitimate questions regarding the project’s consistency with and future application of the nonconforming use ordinance. As described above, the project is a significant redevelopment. The LCP does not provide detailed standards for determining when something goes beyond ‘normal and routine maintenance.’ Absent any LCP definition, the Commission can look to guidance based on the Coastal Act. In that sense, the Commission has been trying to make clear distinctions between what constitutes repair and maintenance, and what constitutes something more than repair and maintenance (*i.e.*, redevelopment), requiring full Coastal Act/LCP consistency review. Applying the Commission’s recent work on this concept (including in the Solana Beach, Newport Beach, and Marin County LCPs), there is no doubt that the current project is well over the redevelopment threshold. In fact, the foundation work and roof work alone each represent 100% replacement of these structural elements, and the other elements (seismic system, including diaphragm transfer (*i.e.* new structural support) system, new decks and porches, etc.) raise similar issues.<sup>10</sup>

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<sup>10</sup> Note that the City acknowledged the lack of a redevelopment definition in its LCP, and came up with its own thresholds in a January 22, 2015 memorandum titled “Alteration/Remodel vs. Reconstruction of Nonconforming Structure.” In that 2015 memo, the City decided to use a 50% threshold because the nonconforming regulations include the same in terms of disaster replacement (note that the Commission’s regulations also use a 50% threshold), but the City also decided that the 50% threshold only applied to exterior wall replacement in excess of

The City's rationale for allowing the project is primarily based on two applications of the nonconforming regulations: allowing for improved livability of a nonconforming residential use (per IP Section 24.18.080(3)), and correcting unsafe conditions (per IP Section 24.18.020(6)). With respect to the new foundations and seismic work, the City acknowledges that these project elements do not qualify as normal routine maintenance (per IP Section 24.18.080(1)), stating: "The proposed improvements to the structures qualify as normal and routine maintenance **with the exception of the replacement of the foundation and new lateral elements to help improve seismic performance.**" (See **Exhibit 5**, page 19.) With respect to the foundations, the City cites the section of the nonconforming use ordinance that provides that "nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official." (IP Section 24.18.020(6).) To support this finding, the City relies on an email from the Deputy Building Official Eric Simonson stating as follows:

*I have reviewed the Geotechnical recommendations from Haro, Kasunich as well as the letter from the structural engineer Paul Endres. It would appear based on both letters and site visits from staff that, the foundation supporting these structures are failing due to poor soils conditions the original 1940's buildings are sitting on as well as lack of proper reinforcement in the concrete. I agree with the information provided and believe the foundation system of these structures needs attention as soon as possible to improve the structural integrity and safety of the occupants.*

While the Applicants have provided extensive information and materials supporting their desire for a new foundation to improve the structure's safety, the provision of the nonconforming use ordinance upon which the City relied on to approve the project requires that the building or structure "be declared unsafe" for occupancy.. Nonetheless, the house is currently occupied, even though the Deputy Building Official's email suggests that the foundation may be unsafe. However, it is unclear whether the LCP requires a more formal "declaration" by the Building Official (*i.e.*, red-tagging) in order to take advantage of the exception provided by IP Section 24.18.020(6) to strengthen or restore an unsafe building condition. Although there is little doubt that a new foundation would likely improve the safety of the existing structures, as would be the case for most homes in the State, it is not clear that the intent of the LCP was met in this case. In addition, although it can be inferred that the lateral seismic improvements would have been treated the same by the City's Deputy Building Official, the record does not include references past the foundation work itself.

In addition, the City did not address the internal inconsistencies within the ordinance on these points and how those are to be resolved. Specifically, while unsafe conditions can be rectified per IP Section 24.18.020(6), structural alterations are allowed per IP Section 24.18.080(3) only to "improve livability," which is not defined, and only in that case if the building bulk is not

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50%. Based on this, the City determined that the project did not meet that redevelopment threshold, regardless of the proposed new foundations for the main house and the guest cottage and the other proposed substantial structural modifications to both these buildings.

increased.<sup>11</sup> In this case, the structure is being raised, increasing its bulk overall, and new features (like a porch and deck) increase that volume as well.<sup>12</sup>

In addition, and absent any LCP definition, the City justified its action in part based on its own interpretation of what constitutes redevelopment. However, the City's interpretation is not consistent with recent Commission actions defining redevelopment, which have generally included substantial foundation work in the definition of redevelopment.<sup>13</sup> The issue of coastal redevelopment is one of the most significant affecting the shoreline and bluff areas of the State's urban centers, such as the City of Santa Cruz. It is all the more critical in a case like this where the issues are not about residential redevelopment in a residential zone; rather they regard residential redevelopment in an open space and recreational zone. It is clear that the City-approved project in this case is a complete redevelopment of this site. The project allows for a complete retrofitting of the residence, including a new foundation, new seismic measures in the floors and roof, new electrical, mechanical, and plumbing systems, new exterior siding, a new roof, new windows, new doors, new trim, new copper gutters, and a new deck. The guest cottage will get a new bathroom, new exterior siding, new doors, new windows, new trim, a new roof, new copper gutters, and a new foundation. There will also be a new retaining wall along the driveway, and a new fence along the blufftop edge. Even casual laypersons would reasonably conclude that the project is more than simple repair and maintenance. Again, these are particularly important issues considering the location of this residence and guest cottage on an eroding blufftop and immediately adjacent to an extremely well-used segment of the CCT, in a zoning district that prioritizes oceanfront recreational uses and in which residential uses are not allowed, and given that it is the only residence located seaward of the existing West Cliff Drive/CCT promenade. It is not clear that allowance for structural alterations "to improve livability" per IP Section 24.18.080(3) was intended to allow for complete and total redevelopment of a nonconforming residential use. These types of redevelopment issues were not appropriately evaluated and addressed in the City's action, and those reasons as well direct the Commission to find a substantial LCP issue in this case.

In short, it could be argued that the City reasonably interpreted the nonconforming regulations in this case. At the same time it is equally clear that the nonconforming regulations contain potential internal inconsistencies that could support other reasonable arguments that are different than the City's. These questions raise fundamental issues with respect to the way in which the LCP is to be understood on such a critical issue as continuance of legal nonconforming residential uses on coastal blufftop properties and allowance of complete redevelopment as a nonconforming residential use. Therefore, application of the legal nonconforming use ordinance here raises a substantial issue of LCP conformance.

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<sup>11</sup> Non-structural alterations are allowed under that section to "improve livability" subject to the same bulk requirements.

<sup>12</sup> Note that IP Section 24.18.060 also does not allow an expansion in the area occupied by the nonconforming use.

<sup>13</sup> For example, the definition of redevelopment in the Marin LUP as certified by the Commission includes alteration of 50% or more of any major structural components including exterior walls, floor and roof structure, and foundation. Similarly, the Solana Beach LUP defines Blufftop Redevelopment to include "demolition of an existing bluff home or other principal structure, or portions thereof, which results in: (a) Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation..." See, also, the Commission's Sea-Level Rise Policy Guidance at pp. 90 and 133 (specifically A.12.C).

Thus, for the reasons stated above, the Commission finds that the City-approved project raises a substantial issue with respect to the project's consistency with the OF-R, SPO, and WCDO zoning designations as they relate to the LCP's nonconforming use/structure provisions, including the internal tension in the nonconforming chapter regarding legal nonconforming uses and structures generally and allowances for nonconforming residential uses and structures specifically.

#### *Hazards/Shoreline Protection Overlay*

The Appellant raises concerns with regard to the project's consistency with the SP-O zoning district overlay, including with respect to erosion and geologic stability of the redevelopment.

The SP-O overlay applies to the City's entire coastline and requires, among other things, that all new development proposed within areas subject to natural hazards be sited and designed to minimize risks to human life and property. Specific findings required by the SP-O regarding coastal hazards include that the development: is sited and designed to assure stability and structural integrity of its expected economic life span and minimizes alterations to natural land forms; minimizes alteration of cliffs, bluff tops, bluff faces or bases, and will not interfere with sand movement; maintains public view corridors between the sea and the first public roadway parallel to the sea and maintains natural views of the coastline; protects and enhances free public access to or along the beach, and signage for such access is provided when necessary; includes mitigation measures prescribed in any applicable environmental document; and is consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act. See **Exhibit 7** for the full requirements of the SP-O overlay.

As previously discussed, the existing residence sits atop an eroding bluff and is protected by primarily unpermitted shoreline protection. While the City generally addressed the requirements of the SP-O district in its approval, its analysis focused almost exclusively on the proposed new foundations for the house and cottage redevelopment, and failed to acknowledge that both would rely on a system of primarily unpermitted shoreline protection in order to ensure their long-term stability. Furthermore, the City did not discuss the permit status of the armoring at this location. As indicated earlier, only 300 cubic yards of riprap at this location is permitted, but there is nearly five times that amount of armoring at the site (gabion baskets and riprap) that almost completely covers the beach at the base of the most upcoast bluffs at the site.

In short, the City's approval failed to analyze whether and to what extent the redevelopment is reliant on these shoreline protection measures (and the Applicants' geotechnical reports did not analyze this issue). On this point, the Coastal Act and the LCP only allow armoring to protect existing structures. As sites redevelop, as is the case with this project, they are no longer 'existing structures' for purposes of armoring, but rather are redeveloped structures that must meet these requirements.<sup>14</sup> In this case, the City did not evaluate whether the redeveloped residential development could meet LCP tests for shoreline development (e.g., in terms of setbacks without reliance on armoring, etc.), and did not address the armoring that is present. In fact, given that the proposed redevelopment includes new foundations for both the house and the

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<sup>14</sup> Again, see recent LCP approvals by the Commission related to the issue of redevelopment in Marin and Solana Beach LCPs. See also, CDP 3-14- 0488 (Iceplant LLC).

cottage (which constitutes new development even under the City's interpretation), the City's approval should have addressed the various shoreline protection issues, including modification of the project to avoid the need for reliance on shoreline protective devices. For all of these reasons, the appeal raises substantial issues with respect to the proposed project's consistency with the LCP's Shoreline Protection Overlay requirements.

*Visual and Scenic Resources/Community Character/West Cliff Drive Overlay*

The Appellant raises issues related to the protection of visual resources and community character with regard to the City-approved redevelopment. Specifically, the Appellant notes that the project's unique location as the only residential structure on the seaward side of West Cliff Drive, its history, and its Cotswold<sup>15</sup> architecture set it apart from all other West Cliff Drive structures, which are all located on the inland side of West Cliff Drive. The appeal takes issue with the City's findings that the redevelopment will enhance the visual quality of the site, noting that the current Cotswold cottage, with its soft blue palette, blends harmoniously with the ocean and the sky as viewed from West Cliff Drive, whereas the redeveloped structures will employ a dark brown, burnt application for siding that will not blend with the sea and sky. The Appellant further contends that the City erred in not requiring a reconstruction permit as required for nonconforming structures located in the West Cliff Drive Overlay (WCDO). See **Exhibit 7** for the full text of all cited LCP standards.

The LCP generally requires that new development "maintain views between the sea and the first public roadway (IP Section 24.08.250)." The subject property's location in the WCDO establishes heightened standards with respect to visual resources. The purpose of the WCDO "is to promote quality residential development on and adjacent to West Cliff Drive that positively enhances the public space or realm along West Cliff Drive... preserve, protect and enhance West Cliff Drive as an important social and environmental city and community space; reinforce the residential neighborhood character of the north side of West Cliff Drive; preserve the public view toward the ocean from streets which intersect with West Cliff Drive; and enhance the streetscape by requiring landscaping and modulation of building forms on buildings facing West Cliff Drive." (IP Section 24.10.4200). The WCDO further provides that "[a] reconstruction permit shall not be required to repair or reconstruct a nonconforming structure *except if the proposed reconstruction varies in any way in exterior design from the previous building being repaired or replaced.*" (IP Section 24.10.4230(10) (emphasis added).

In this case, the Appellant raises valid questions regarding whether the City should have required a reconstruction permit under the requirements of the WCDO given the approved project's substantial changes in exterior design compared to the existing structure (see **Exhibits 2 and 3** for photos of the existing structure and **Exhibit 4**, pages 1 and 14-15 for simulations of the City-approved redeveloped structure). In addition, the house and cottage are being elevated and a new

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<sup>15</sup> The Appellant contends that the existing residence and cottage are a "Cotswold [sic] cottage, built in 1937 by local cellist Bessie Boyd Miller with its detached music room is an iconic Santa Cruz landmark." The Cotswold style of architecture is a unique style based on houses from the Cotswold region of England, and is sometimes called the storybook style, with buildings made in this form also sometimes referred to as Tudor cottages. Roofs made with pseudo-thatch, steep arch gables, and arched doorways are all common features of the Cotswold style. Walls are usually sided in brick, stone, or stucco, and rooms are often small and irregularly shaped. Cotswold houses often have a prominent chimney, often near the front door of the house. The Applicant disputes that the existing structures are Cotswold.

deck, a new porch, a new retaining wall, and a new blufftop fence are being added, all of which will change the exterior design. It seems clear that the LCP would require a reconstruction permit.

In addition, the Appellant claims that the color and architectural design of the redevelopment may detract from the public views of the ocean and will not enhance the visual quality of the area (including because the dark design will be incongruous with the ocean and sky as seen from West Cliff Drive). The Appellant further contends that the approved project will perpetuate the only residence on the seaward side of West Cliff Drive, thereby blocking what would otherwise be open coastal views, and that the zoning and overlay districts suggest this is not appropriate at this location.

While questions of the effect of development on views, character and neighborhood compatibility can be somewhat subjective, and different observers can often have different reactions, these issues at this location also require a slightly different lens than might redevelopment of a house inland of West Cliff Drive where it is surrounded by other houses. This house is the only house on the seaward side of West Cliff Drive and is located in an LCP zoning district that does not allow residential uses. Yes, it is a legal nonconforming structure and use, and those LCP requirements must be countenanced, but at the same time it is also a distinct anomaly as it relates to LCP objectives, and must be understood in that way as well. So while some of the design changes may seem minor to some, these changes will undeniably change the views and character of the site. In terms of view impacts, the foundation of the house will be raised and the house will be added to (e.g., decks and porch, etc.), necessarily increasing the bulk that currently intrudes on coastal views seen from West Cliff Drive. In addition, the site is incredibly prominent in the views that are not blocked, and the changes would appear to increase the residence's visual prominence, including through a design that would essentially darken the building within what is otherwise an ocean and sky view. Thus, the approved project will affect the character of the view along West Cliff Drive. It is possible that the LCP required reconstruction permit process could have addressed some of these issues, but that process did not occur.

In short, the project is located within a very prominent viewshed, and there are some questions as to whether the City appropriately addressed its visual and character impacts, particularly as they relate to the objectives of the base zoning and overlays, which clearly prioritize protecting coastal views. For all of these reasons, the appeal raises substantial issues with respect to the proposed project's consistency with the LCP's public viewshed, character, and WCDO requirements.

#### *Public Access/Coastal Zone Overlay*

The Appellant identifies a public access pathway to the beach and coast at the downcoast edge of the property line and raises concerns that the City-approved redevelopment of the main house could impact the public's ability to continue to use this pathway to access this beach, and also contends that this issue was not analyzed in the City's staff report.

Similar to the Coastal Act, the City's LCP contains a host of policies requiring that public access and recreation opportunities along the City's coastline be maximized, and prohibits the removal

of existing coastal access points. For example, LCP Land Use Element Policy 3.5 requires the City to “protect coastal recreational areas, maintain all existing coastal access points open to the public, and enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act” and LCP Land Use Element Policy 3.5.2 requires that development not interfere with the public’s right to access the ocean (see, also, LCP Land Use Element Policies 3.5.1, 3.5.3, 3.5.5 in **Exhibit 7**). Coastal Act public access requirements also apply since the development is seaward of the first public road. The Coastal Act requires that public access and recreational opportunities be maximized.<sup>16</sup> Additionally, as discussed in the hazards section above, the LCP requires that new development be sited and designed to minimize the use of shoreline protection and preserve access to and along the beach and ocean.

In this case, the City’s approval found that “the project will not affect public access to the coast therefore, this finding is not applicable.” However, the City’s analysis did not consider the redevelopment’s potential impacts to the existing public access trail. In addition, the City’s approval also failed to address the significant unpermitted armoring at this location that impedes public access on the beach itself, including in terms of how it relates to LCP requirements that only allow such armoring for existing development, not redevelopment such as this. These access issues are made all the more important due to the location of the property, the public trails, and the beach, and the way in which this project could affect those public resources now and in the future. Thus, for these reasons also, the Commission finds the City-approved project raises a substantial issue with respect to consistency with the above-cited LCP and Coastal Act public access policies.

### **Substantial Issue Conclusion**

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. As explained above, the Commission has historically been guided in its decision of whether the issues raised in a given case are “substantial” by the following five factors: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the City; the significance of the coastal resources affected by the decision; the precedential value of the County’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

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<sup>16</sup> In addition to Section 30210 of the Coastal Act, the California Constitution and the federal Coastal Zone Management Act mandate the protection and enhancement of public access to and along California’s coastline. The Coastal Act redoubles these protections, including mandating that public recreational access opportunities to and along the California coastline be maximized (Coastal Act Section 30210). Coastal Act Section 30210’s direction to maximize access represents a different threshold than to simply provide or protect such access, and Section 30210 is therefore fundamentally different from other like provisions in this respect. It is not enough to simply provide public access to and along the coast, and it is not enough to simply protect public access; rather such public access must also be maximized. This terminology distinguishes the Coastal Act and provides fundamental direction to projects along the California coast that raise public access issues.



In this case, these five factors, considered together, support a conclusion that this project does raise a substantial issue of LCP conformance. In terms of factual and legal support, valid questions are raised regarding whether the City's interpretations of the LCP's nonconforming structure and use requirements are correct, including in light of the LCP objectives associated with the underlying open space zoning and the Shoreline Protection and West Cliff Drive Overlays. In addition, the City did not analyze the project in terms of the hazards requirements of the LCP, particularly as it relates to appropriate setbacks and the armoring located at the site (most of which is unpermitted). There was limited support for the City's public access findings, and it appears that the required reconstruction permit requirements were not applied. Also, there is some question regarding the manner in which views and character should have been evaluated. All of these point to a lack of adequate factual and legal support for the City's action.

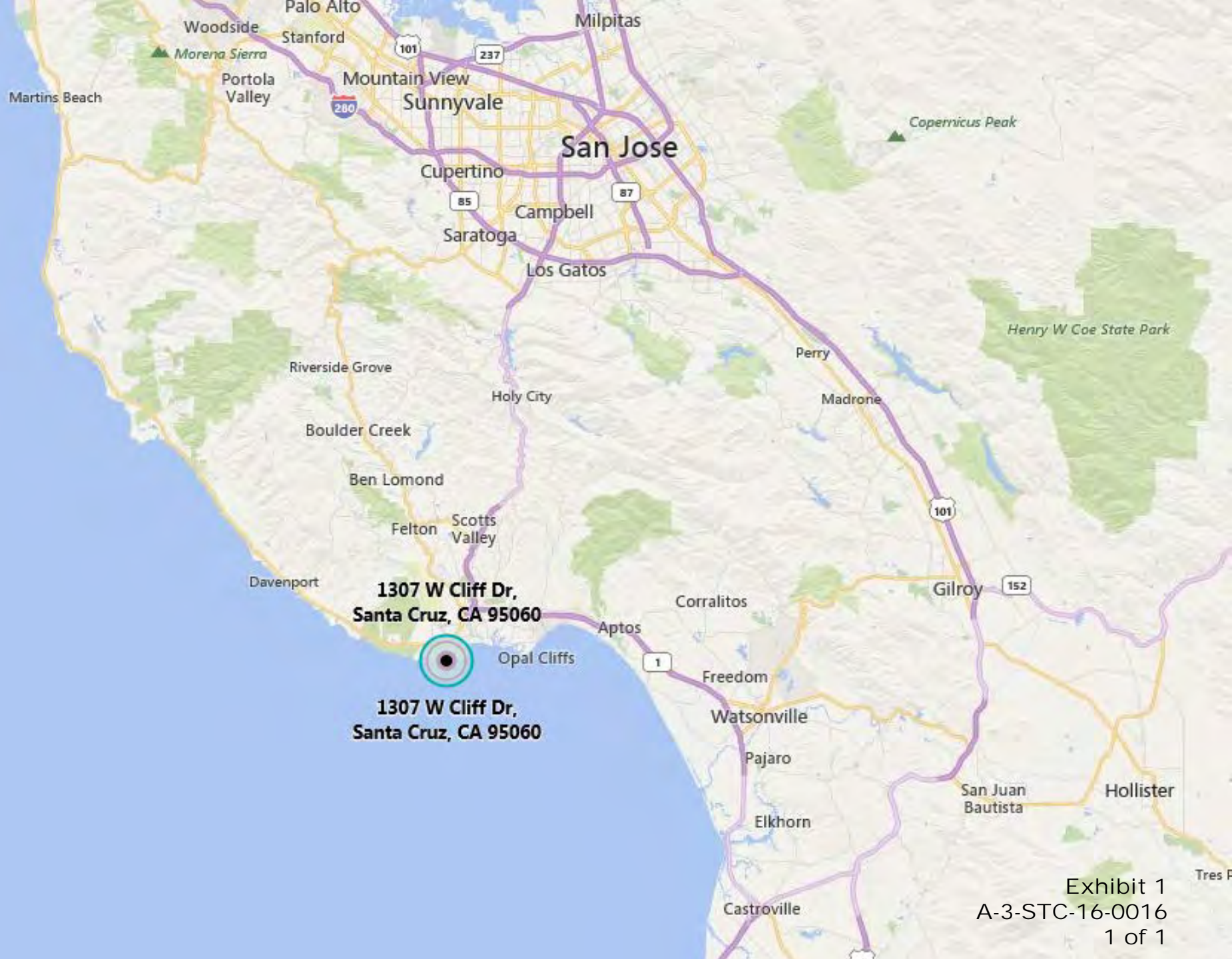
In terms of the scope and extent of the development and the coastal resources affected, the City's approval authorizes the redevelopment of a residence on an oceanfront, blufftop site where residences are not allowed, where it is the only residence along the seaward side of a critically important public access and recreational segment of the CCT, and where it is being protected by existing shoreline protection, the bulk of which is currently unpermitted. In other words, the decision involves significant and critical coastal resources in the City. Moreover, the issues raised by the City's approval are critical issues that the Commission is grappling with statewide with respect to redevelopment of coastal bluff and shoreline properties. And the manner in which the City decided them could be precedential moving forward.

For the reasons stated herein, the Commission finds that Appeal Number A-3-STC-16-0016 raises substantial LCP conformance issues in terms of nonconforming uses, hazards, visual resources, and public access. Therefore, the Commission finds that **a substantial issue** exists with respect to the City-approved project's conformance with the certified City of Santa Cruz LCP, and takes jurisdiction over the CDP application for the proposed project.

### **Information Needed for De Novo Review of Application**

Prior to bringing this matter back for Coastal Commission review in a de novo CDP hearing context, the Applicants will need to provide the information necessary to evaluate the project for consistency with the LCP and the public access and recreation policies of the Coastal Act. Absent information regarding alternative siting and design, the Commission will not be in a position to evaluate the proposed project against these requirements, and does not intend to schedule a hearing until the City and/or the Applicants have developed and provided further information to bridge the analytic gaps that are currently present and associated with the proposed project. Such information includes the following:

- Analysis of how the proposed foundation changes to the residence and the guest cottage, which include a six-inch height increase to these structures, affects the bulk and massing (in terms of spatial dimensions) of the new structures.
- An alternatives analysis of different structural and design options and their effect on the project's visual impacts, including variations in design and reconstruction with respect to bulk and coloration.



**1307 W Cliff Dr,  
Santa Cruz, CA 95060**

**1307 W Cliff Dr,  
Santa Cruz, CA 95060**







Property Photos

1307 W CLIFF DR, SANTA CRUZ, CA 95060-6355



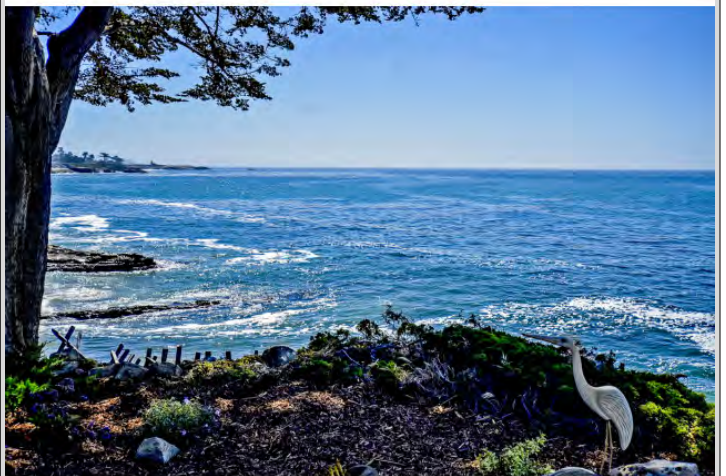


















HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060

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ARCHITECT / ENGINEER

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1307 WEST CLIFF DRIVE SANTA CRUZ, CA

PROJECT INFORMATION	PROJECT AREA	PROJECT DESCRIPTION	SHEET INDEX	CONTACT INFORMATION	
<p><b>HOME OWNER:</b> SHIGEFUMI &amp; AMY HONJO</p> <p><b>ADDRESS:</b>1307 WEST CLIFF DRIVE, SANTA CRUZ, CA 95060</p> <p><b>ACCESSORS PARCEL NUMBER:</b> 003-284-05</p> <p><b>SQUARE FEET:</b> 21,257.28</p> <p><b>COASTAL ZONE:</b> CZ PERMIT JURISDICTION</p> <p><b>ZONE:</b> OFR- OCEAN FRONT RECREATION</p> <p><b>ZONING OVERLAYS:</b> SHORELINE PROTECTION + WEST CLIFF DRIVE</p> <p><b>CONSTRUCTION TYPE:</b> TYPE V B</p> <p><b>APPLICABLE CODES FOR THIS PROJECT:</b></p> <p>BUILDING CODE OF THE CITY OF SANTA CRUZ SANTA CRUZ MUNICIPAL CODE CALIFORNIA CODE OF REGULATIONS TITLE 24 2013 CALIFORNIA ADMINISTRATIVE CODE 2013 CALIFORNIA BUILDING CODE 2013 CALIFORNIA ELECTRICAL CODE 2013 CALIFORNIA PLUMBING CODE 2013 CALIFORNIA MECHANICAL CODE</p>	<p><b>MAIN HOUSE:</b></p> <p>EXISTING AREA: 2,491 SF</p> <p>PROPOSED AREA: 2,221 SF</p> <p><b>GUEST HOUSE:</b></p> <p>EXISTING AREA: 540 SF</p> <p>PROPOSED AREA: 505 SF</p>	<p>This property was constructed in 1940 and has not been well maintained over the years. Due to this, the house has dangerous electrical wiring, faulty plumbing, poor site drainage and crawl space ventilation plus massive air infiltration in the living spaces along with a lot of other shoddy workmanship throughout the property.</p> <p>We will structurally update the houses to meet current building codes and perform maintenance and repairs to revive this neglected property. This will include new hardscape and landscape to properly drain water from the site. There will also be mechanical, electrical, plumbing and finish work on this project including new windows and doors and weatherproofing of the exterior. Please see general notes on sheet A2.0 for additional information on these items.</p>	<p><b>ARCHITECTURAL</b></p> <p>A0.0 PROJECT OVERVIEW / CONTACT INFO A0.1 VICINITY MAP A0.2 ABBREVIATIONS + GRAPHIC SYMBOLS A0.3 PROPOSED SITE PLAN A2.0 EXISTING FLOOR PLAN AND DEMOLITION PLAN A2.1 PROPOSED FLOOR PLANS A2.2 ROOF PLANS A6.0 NORTH BUILDING ELEVATIONS A6.1 EAST BUILDING ELEVATIONS A6.2 SOUTH BUILDING ELEVATIONS A6.3 WEST BUILDING ELEVATIONS A6.4 GUEST HOUSE BUILDING ELEVATIONS A7.0 BUILDING SECTIONS A8.0 EXTERIOR DETAILS A9.0 RENDERING VIEWS A9.1 RENDERING VIEWS</p> <p><b>LANDSCAPE</b></p> <p>L1.0 LANDSCAPE SITE PLAN L1.1 PLANT IMAGES &amp; MATERIALS</p> <p><b>CIVIL</b></p> <p>TP-1 CIVIL BOUNDARY &amp; TOPOGRAPHICAL SURVEY PLAN C1.0 GRADING AND DRAINAGE PLAN C2.0 RETAINING WALL PLAN &amp; PROFILE C3.0 EROSION CONTROL PLAN</p> <p><b>GEO-TECHNICAL / SOILS</b></p> <p>SOILS REPORT</p> <p><b>STRUCTURAL</b></p> <p>S0.1 GENERAL NOTES S0.2 CALCULATIONS S0.3 CALCULATIONS S1.1 SEISMIC SAFETY PLANS S1.2 SEISMIC SAFETY PLANS</p>	<p><b>HOME OWNER:</b> SHIGE &amp; AMY HONJO 1307 WEST CLIFF DRIVE SANTA CRUZ, CA 95060</p> <p><b>ARCHITECTS:</b> PAUL ENDRES / ENDRES STUDIO 4053 HARLAN STREET SUITE 113 EMERYVILLE, CA 94608 PH: 510-898.6960</p> <p><b>STRUCTURAL ENGINEER:</b> PAUL ENDRES / ENDRES STUDIO 4053 HARLAN STREET SUITE 113 EMERYVILLE, CA 94608 PH: 510-898.6960</p> <p><b>GEOTECHNICAL ENGINEER:</b> RICK PARKS HARO, KASUNICH &amp; ASSOC., INC 116 EAST LAKE AVENUE WATSONVILLE, CA 95076 PH: 831-722-4175</p> <p><b>DESIGNERS:</b> JONNA ALEXANDER GREEN 790 22ND AVE #7 SAN FRANCISCO, CA 94121 PH: 612-751-4141</p> <p>KATE COURTEAU 5 DUNCAN STREET SAN FRANCISCO, CA 94110 PH: 617-513-3558</p> <p><b>LAND USE CONSULTANT</b> DEIDRE HAMILTON HAMILTON SWIFT &amp; ASSOCIATES, INC. 500 CHESTNUT STREET, SUITE 100 SANTA CRUZ, CA 95060 PH: 831-459-9992</p>	<p><b>CONTRACTOR:</b> MARK ACKER ACKER CONST. &amp; ASSOC., INC. 102 HAGAR COURT SANTA CRUZ, CA 95064 PH: 831-227-0247</p> <p><b>CIVIL ENGINEER:</b> JEFFREY R. NAESS BOWMAN &amp; WILLIAMS CIVIL ENGINEERS 1011 CEDAR STREET SANTA CRUZ, CA 95060 PH: 831-426-3560</p> <p><b>LANDSCAPE ARCHITECT:</b> JONI JANECKI &amp; ASSOCIATES, INC. 515 SWIFT STREET SANTA CRUZ, CA 95060 PH: 831-423-6040</p> <p><b>ARBORIST:</b> MAUREEN HAMB 849 ALMAR AVENUE SUITE C#319 SANTA CRUZ, CA 95060 PH: 831-763-6919</p>

ISSUES/REVISIONS	DATE
PRELIMINARY REVIEW SET	8/12/15
DISCRETIONARY PERMIT SET	9/4/15

PROJECT OVERVIEW

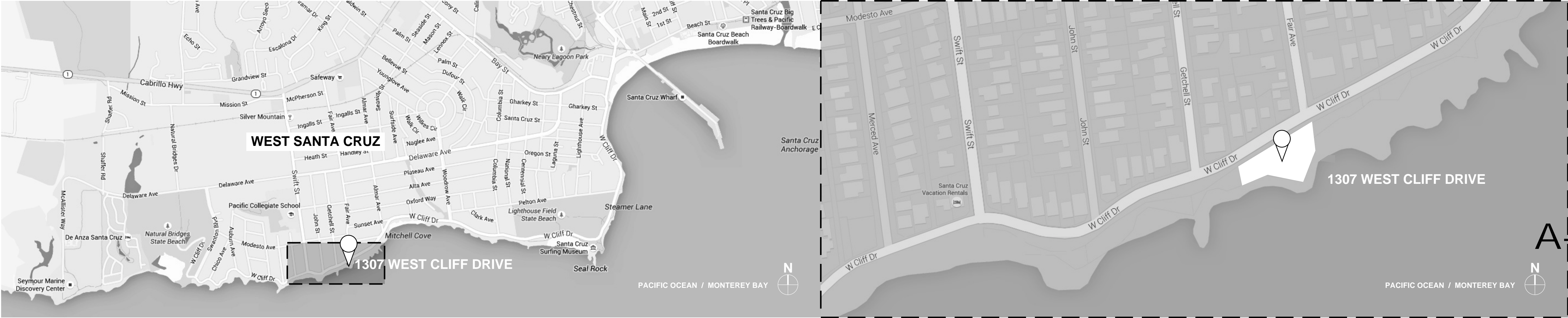
Exhibit 4  
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1

NEIGHBORHOOD CONTEXT IMAGE



2

WEST SANTA CRUZ VICINITY MAP

3

NEIGHBORHOOD MAP

HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060

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VICINITY MAP





1 PROPOSED STREET VIEW RENDERING

# 1307 WEST CLIFF DRIVE SANTA CRUZ, CA

## ABBREVIATIONS

ABV	ABOVE
ADJ	ADJACENT
AFF	ABOVE FINISHED FLOOR
AP	ACCESS PANEL
ACT	ACOUSTIC CEILING TILE
A/C	AIR CONDITIONING
ALT	ALTERNATE
ARCH	ARCHITECT(URAL)
BLKG	BLOCKING
BD	BOARD
BOT	BOTTOM
BLDG	BUILDING
CLR	CLEAR
CLG	CEILING
CONC	CONCRETE
COL	COLUMN
CPT	CARPET
CMU	CONCRETE MASONRY UNIT
CONST	CONSTRUCTION
CG	CORNER GUARD
DTL	DETAIL
DIAM	DIAMETER
DIM	DIMENSION
DR	DOOR
DWG	DRAWING
DF	DRINKING FOUNTAIN
DISP	DISPENSER
(E), EX	EXISTING
EA	EACH
EL., ELEV	ELEVATION
ELECT	ELECTRICAL
EP	ELECTRICAL PANELBOARD
EWC	ELECTRIC WATER COOLER
EQ	EQUAL
EXT	EXTERIOR
FBO	FURNISHED BY OTHERS
FF	FINISHED FLOOR
FT	FEET
FLR	FLOOR
FLOUR	FLUORESCENT
FOF	FACE OF FINISH

FOS	FACE OF STUD
FIN	FINISH(ED)
FSEC	FOOD SERVICE EQUIP. CONTRACTOR
FRP	FIBERGLASS REINFORCED PANEL
FO	FACE OF
GA	GAUGE
GC	GENERAL CONTRACTOR
GL	GLAZING, GLASS
GSM	GALVANIZED SHEET METAL
GYP	GYPSON
GWB	GYPSON WALL BOARD
HDWR	HARDWARE
HT	HEIGHT
HORIZ	HORIZONTAL
INT	INTERIOR
INSUL	INSULATION
KEC	KITCHEN EQUIP. CONTRACTOR
MAX	MAXIMUM
MECH	MECHANICAL
MIN	MINIMUM
MTL	MATERIAL
MTL	METAL
(N)	NEW
NIC	NOT IN CONTRACT
NTS	NOT TO SCALE
O/	OVER
O.C.	ON CENTER
O.S.C.I.	OWNER SUPPLIED, CONTRACTOR INSTALLED
PBO	PROVIDED BY OWNER
PLAM	PLASTIC LAMINATE
PLYWD	PLYWOOD
PTD	PAINTED
REF	REFRIGERATOR
REG	REGISTER
RD	ROOF DRAIN
RO	ROUGH OPENING
SEC	SECTION
SHT	SHEET
SIM	SIMILAR

SQ	SQUARE
SS	STAINLESS STEEL
SSD	SEE STRUCTURAL DRAWINGS
TBD	TO BE DETERMINED
TYP	TYPICAL
UON	UNLESS OTHERWISE NOTED
VIF	VERIFY IN FIELD
WSC	WAINSCOT
WH	WATER HEATER

## GRAPHIC SYMBOLS

	REVISION REFERENCE
	ELEVATION / SECTION OR DETAIL REFERENCE
	DETAIL REFERENCE
	ALIGN FINISH SURFACES
	KEY NOTE
	REVISION SYMBOL
	ELEVATION REFERENCE
	EXTERIOR WINDOW OR DOOR REFERENCE
	INTERIOR WINDOW OR DOOR REFERENCE
	PLUMBING FIXTURE
	APPLIANCE
	ROOM NUMBER



## HONJO RESIDENCE

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## ABBREVIATIONS + GRAPHIC SYMBOLS

Exhibit 4  
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3 of 15  
A0.2



## HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
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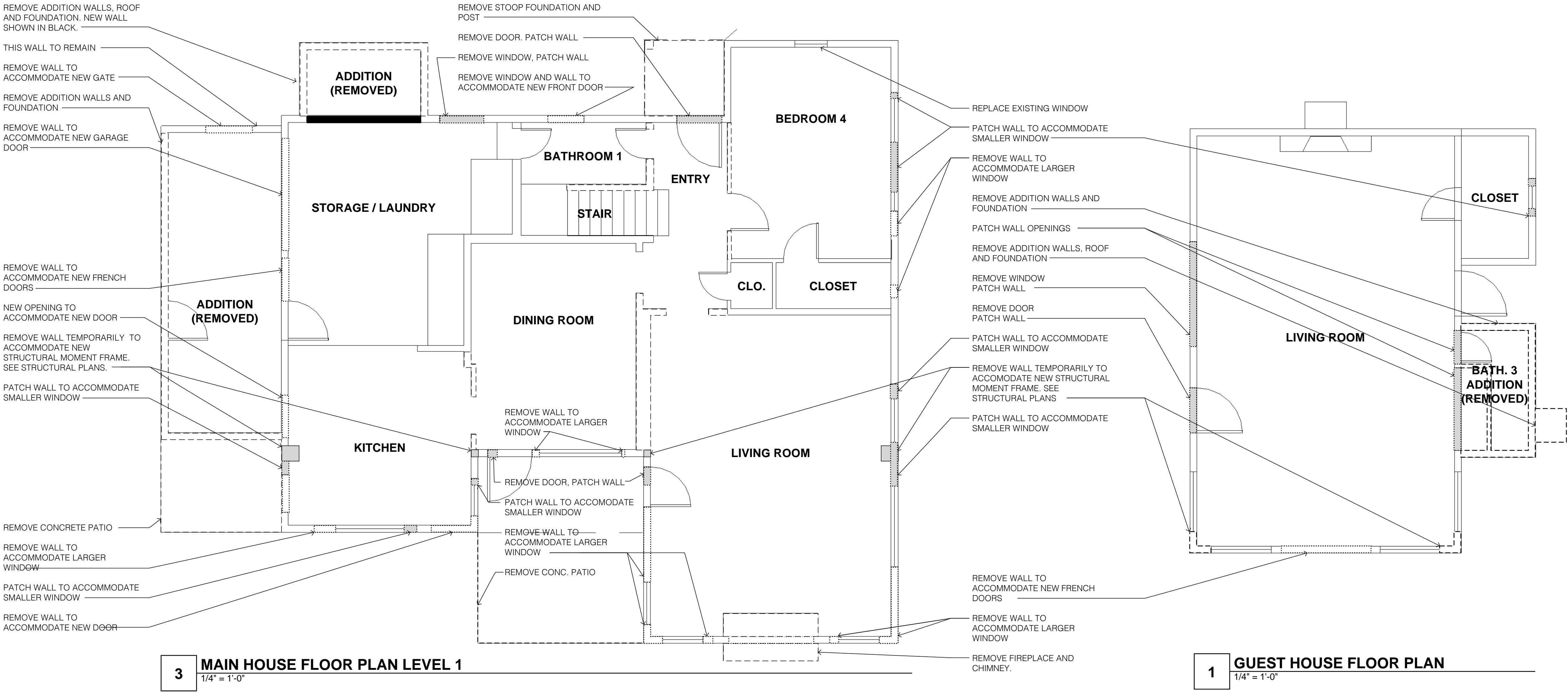
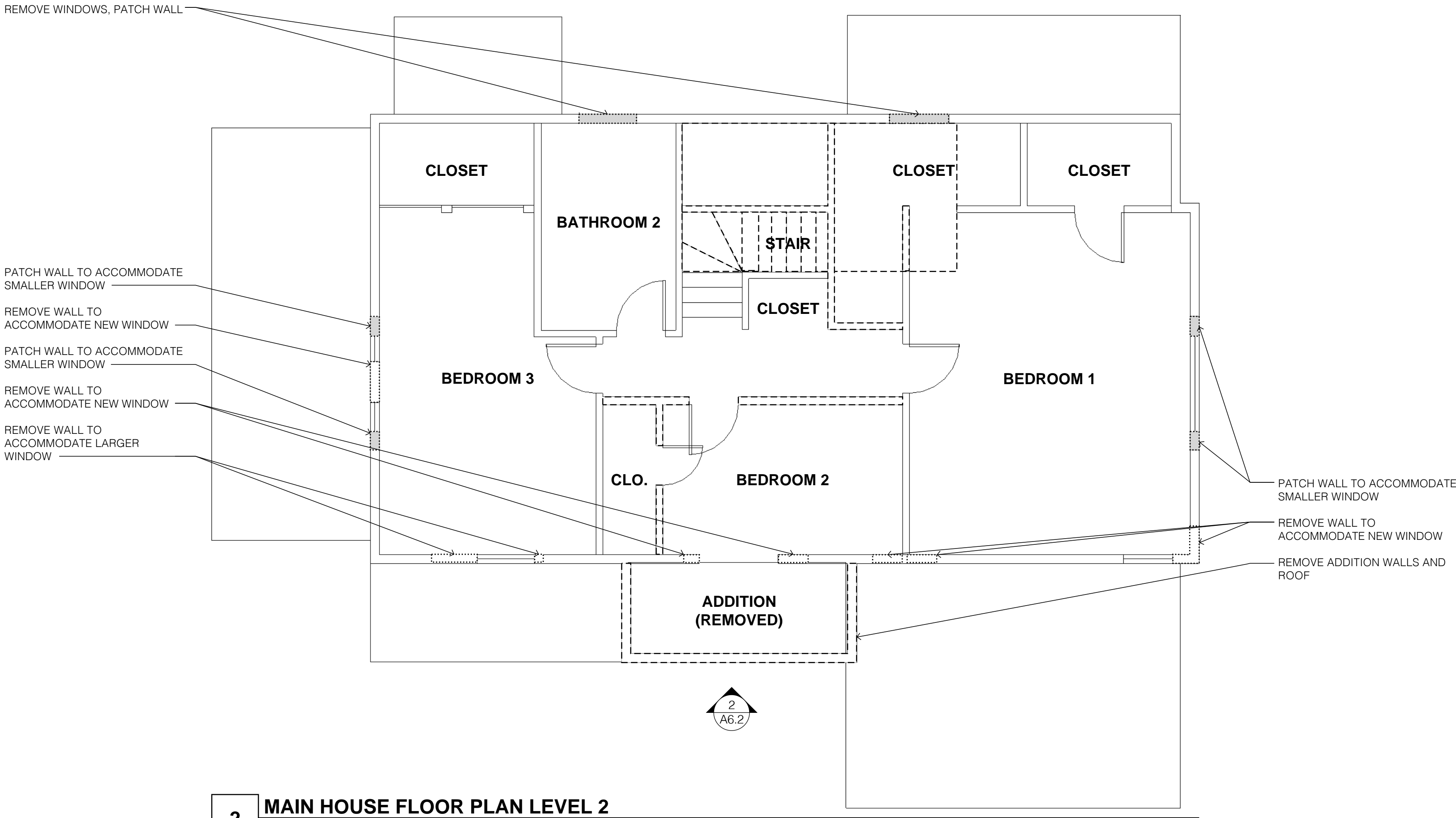
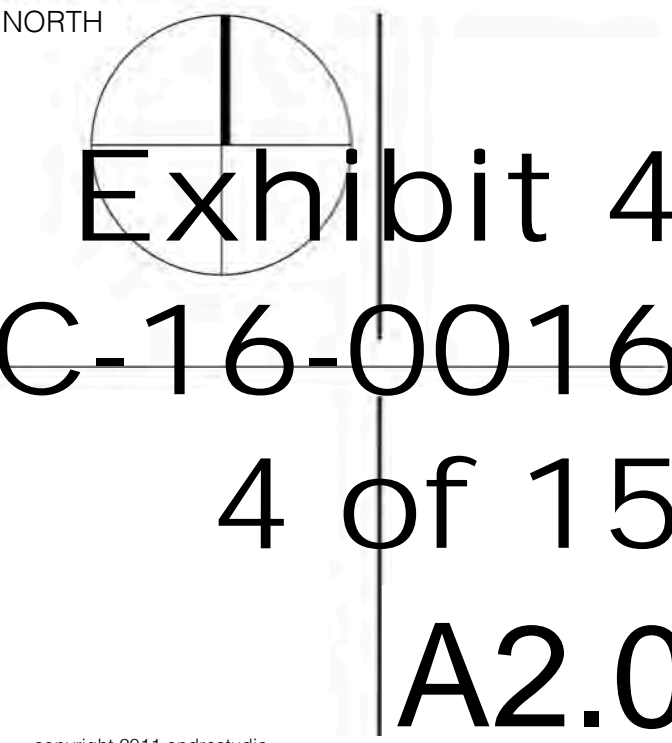
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9/4/15

## EXISTING FLOOR PLAN AND DEMOLITION PLAN



### 1 GUEST HOUSE FLOOR PLAN

1/4" = 1'-0"

### DEMO ANALYSIS

#### MAIN HOUSE:

58' EXISTING WALLS TO REMAIN LEVEL 1  
+ 117' EXISTING WALLS TO REMAIN LEVEL 2

175' TOTAL EXISTING WALLS TO REMAIN

198' EXISTING EXTERIOR WALLS LEVEL 1  
+ 139' EXISTING EXTERIOR WALLS LEVEL 2

337' TOTAL EXISTING EXTERIOR WALLS

175' / 337' = 51.9%

#### GUEST HOUSE:

73' EXISTING EXTERIOR WALLS TO REMAIN

116' TOTAL EXISTING EXTERIOR WALLS

73' / 116' = 63%

### LEGEND

NEW WALL

PATCH WALL

DEMOLISH OR TEMPORARILY REMOVE

NEW OPENING

### GENERAL NOTES:

#### REMOVAL OF EXTRANEIOUS ADDITIONS:

We'd like to restore the house back to a more original shape by doing the following:

1. Removal of addition at main level along front north elevation. We wish to remove this addition because it serves no functional purpose in the use of the home. (Sheets A2.0, A2.2, A6.0, A6.3).

2. Removal of dormers along front north elevation. We wish to remove these dormers as they serve no functional purpose in the use of the home, and complicate the building envelope as it pertains to weatherproofing in coastal exposure. (Sheets A2.0, A2.2, A6.0, A6.1, A6.3). Removal of dormers along back south elevation. We wish to remove these dormers as they serve no functional purpose in the use of the home, and complicate the building envelope as it pertains to weatherproofing in coastal exposure. (Sheets A2.0, A2.2, A6.1, A6.2, A6.3).

3. Removal of lean-to along west elevation. We wish to remove this addition because it serves no functional purpose in the use of the home. (Sheets A2.0, A2.2, A6.0, A6.2, A6.3).

4. Removal of addition at level 2 on the south elevation. We wish to remove this addition because it serves no functional purpose in the use of the home. (Sheets A2.0, A2.2, A6.1, A6.2, A6.3).

5. Removal of wood fireplace and chimney (Sheets A2.0, A2.2, A6.1, A6.2, A6.3).

6. Remove existing bathroom addition at guest house, relocate to existing closet. (Sheets A2.0, A6.4).

#### WEATHERPROOFING REPAIRS:

As shown in the building leakage test results, submitted as part of this package, both structures have extreme air infiltration problems at existing doors, windows and siding. This together with poor construction techniques and weatherproofing details have created the need for the following:

1. Restore to original roofing material-- wood shingles --with proper waterproofing and flashing. This work shall be done on both structures.

2. Remove and replace the exterior siding on both structures. Install new air and water barrier and new natural wood siding with Japanese torching treatment as additional weather retardant - this will slightly darken the wood siding.

3. Install new CA Title-24 compliant, weatherproof windows and doors on both structures.

#### AIR QUALITY

1. Install ventilating skylights on north facing roof slope of main house for functional cross ventilation.

#### SECURITY UPGRADES:

1307 West Cliff Drive has been broken into since it was purchased in June 2014. Prior to this, police records submitted as a part of this package show that historically the house has been a neighborhood target for disturbances. Based on this data, security has become a safety issue for the homeowners. The home's high visibility and prominent location do not make it easily defensible from pedestrians on the high trafficked sidewalk and desperate folks in need. We initially requested to install a privacy fence near the house at the front of the property but this request was denied by the planning department. In lieu of this fence, and for the sake of security we'd like to do the following security upgrades.

1. Move the front door 7ft to the middle of the house where (when open) it no longer provides full visual access of the interior of the house from the sidewalk. This will deny pedestrians a view deep into the interior of the house when the homeowner opens the front door.

2. Replace existing street facing windows with new impact resistant frosted glass windows.

3. Remove 2 existing windows on the north elevation and north facing dormers as they are not functional for light or ventilation and therefore only increase risk for security breach. (Sheets A2.0, A6.0).

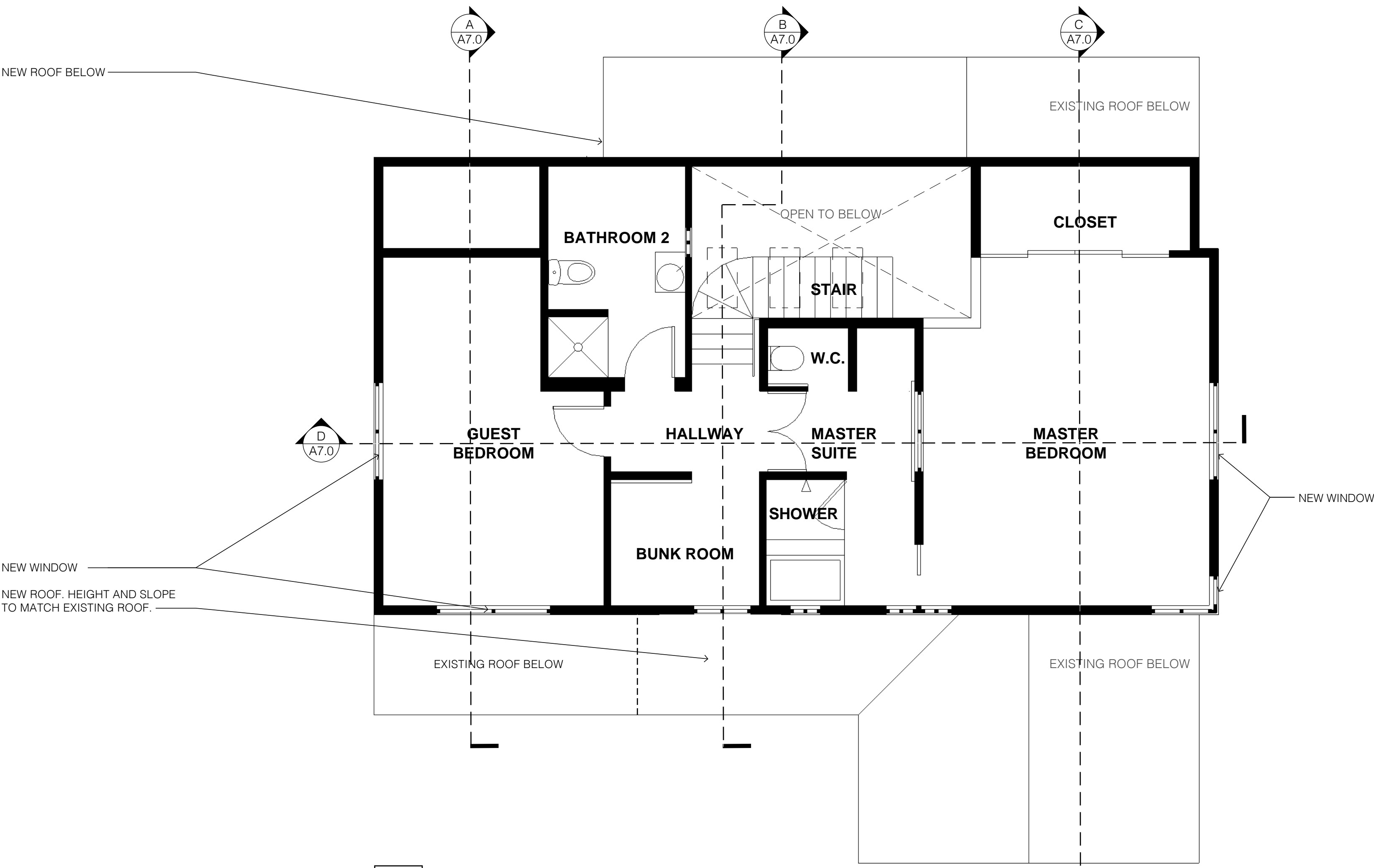
4. Removal of window and door along west side of cottage for security and privacy from the adjacent public sidewalk. (Sheets A2.0, A6.4).

5. Install a private pedestrian gate in an existing wall at the northwest corner of the main house. The existing condition is currently only a vehicular gate, which when open allows undue visual access to their property. (Sheets A2.1, A6.0).

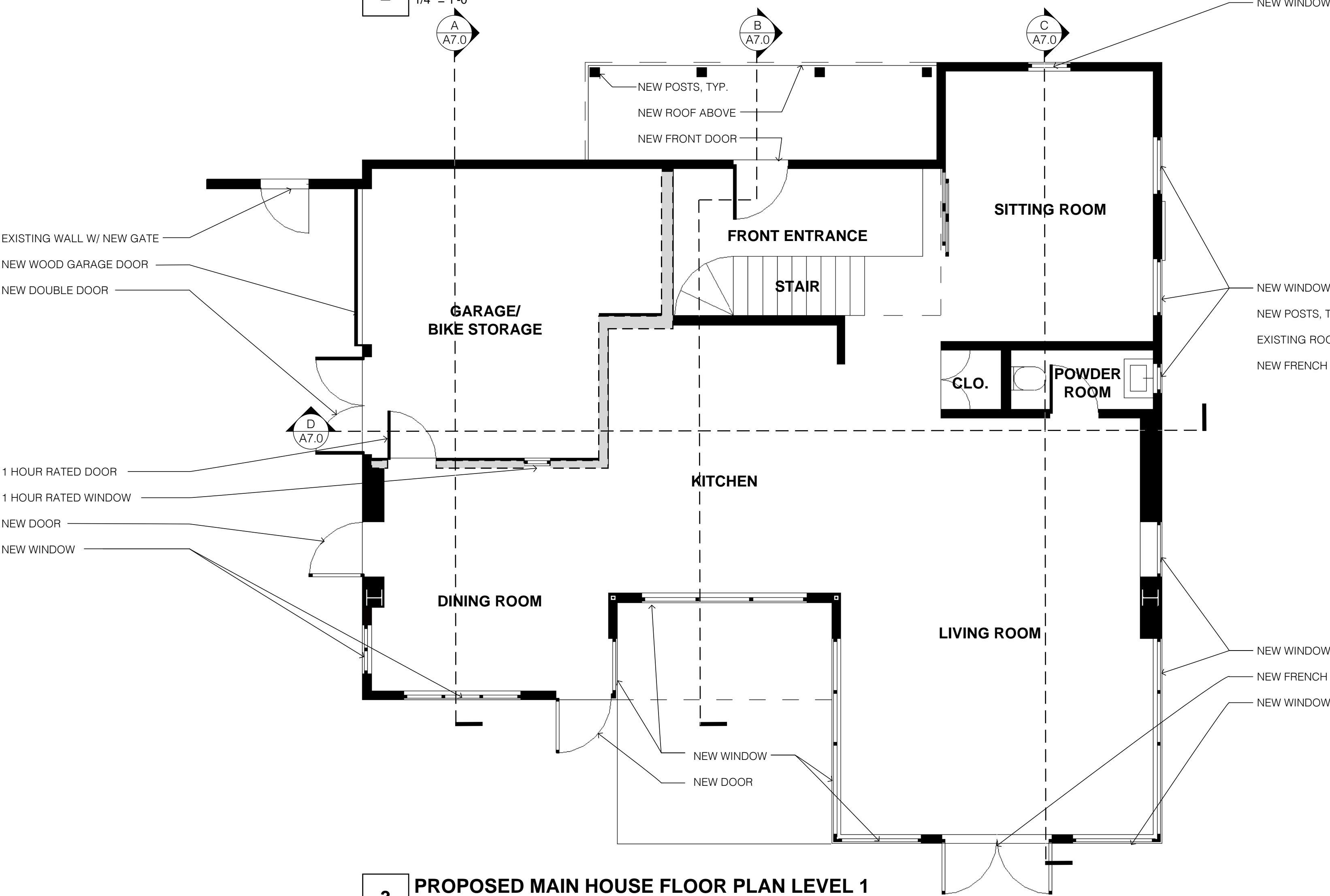
6. Restore garage entrance along west side of main house, minimal clearance allows for car to back into garage. Garage access in this more secure location will deter visual casing for theft of valuables within.

7. Add doors along the ocean side of guest house providing functional access to the structure, and restoring a second means of egress. (Sheets A2.1, A6.4)

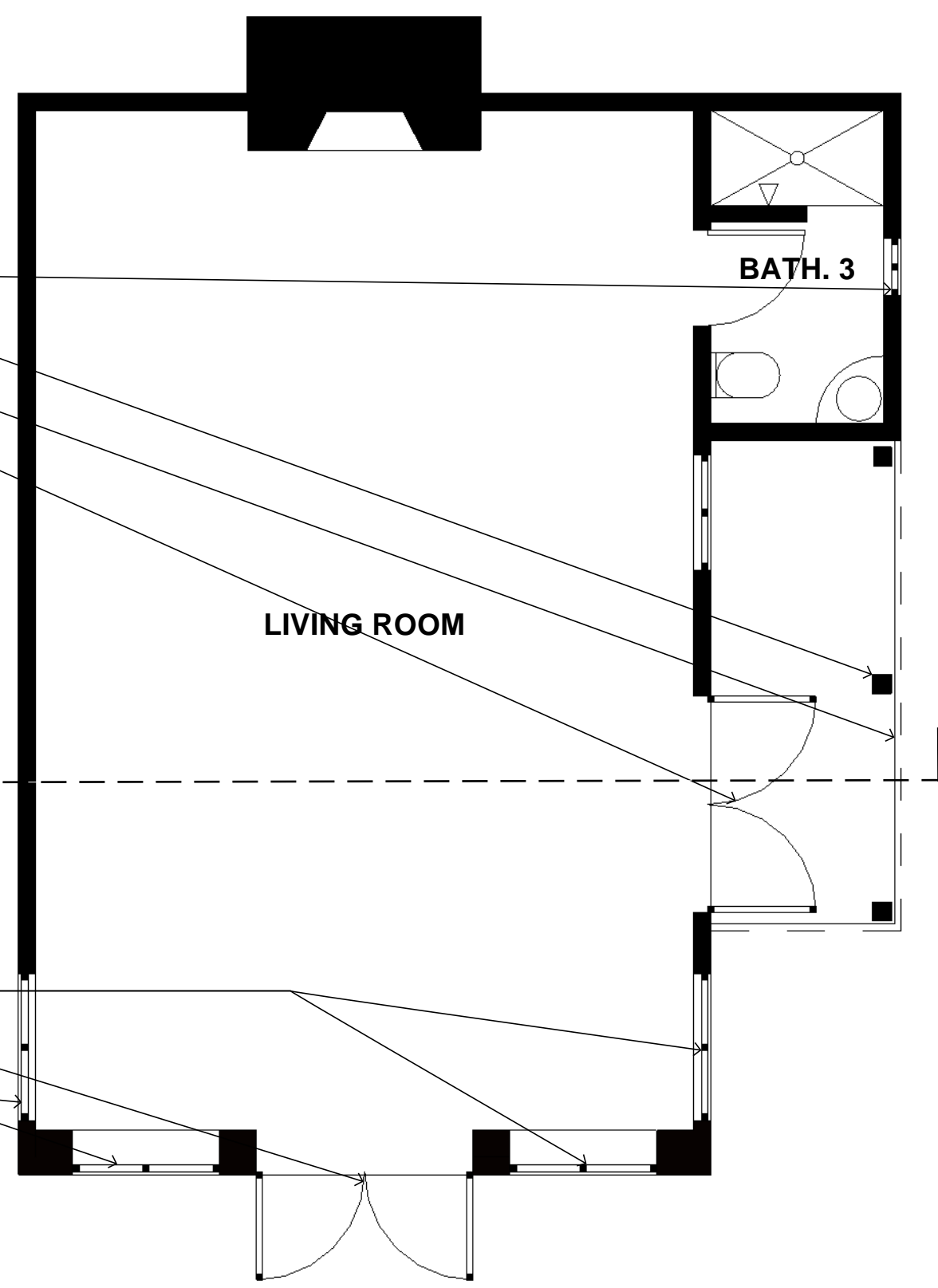




**2** PROPOSED MAIN HOUSE FLOOR PLAN LEVEL 2  
1/4" = 1'-0"



**3** PROPOSED MAIN HOUSE FLOOR PLAN LEVEL 1  
1/4" = 1'-0"



**1** GUEST HOUSE FLOOR PLAN  
1/4" = 1'-0"

LEGEND	
	WALL - FOR PATCH LOCATIONS SEE A0.3
	1 HOUR RATED WALL
	WOOD DOOR
	BRONZE FRAMED GLASS DOOR
	NEW ENERGY EFFICIENT BRONZE WINDOW W/ THERMAL BREAK AND INSULATED GLASS



**HONJO RESIDENCE**

**1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060**

**DESIGNERS:**

JONNA ALEXANDER GREEN  
790 22ND AVENUE #7  
SAN FRANCISCO, CA 94121  
P. (612)751-4141

KATE COURTEAU  
5 DUNCAN STREET  
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P. (617)513-3558

**ARCHITECT / ENGINEER**

PAUL ENDRES  
4053 HARLAN ST. #113  
EMERYVILLE, CA 94608  
P. (510)898-6960

ISSUES/REVISIONS	DATE
PRELIMINARY REVIEW SET	8/12/15
DISCRETIONARY PERMIT SET	9/4/15

**PROPOSED FLOOR PLANS**



A-3-STC-16-0016  
5 of 15  
A2.1

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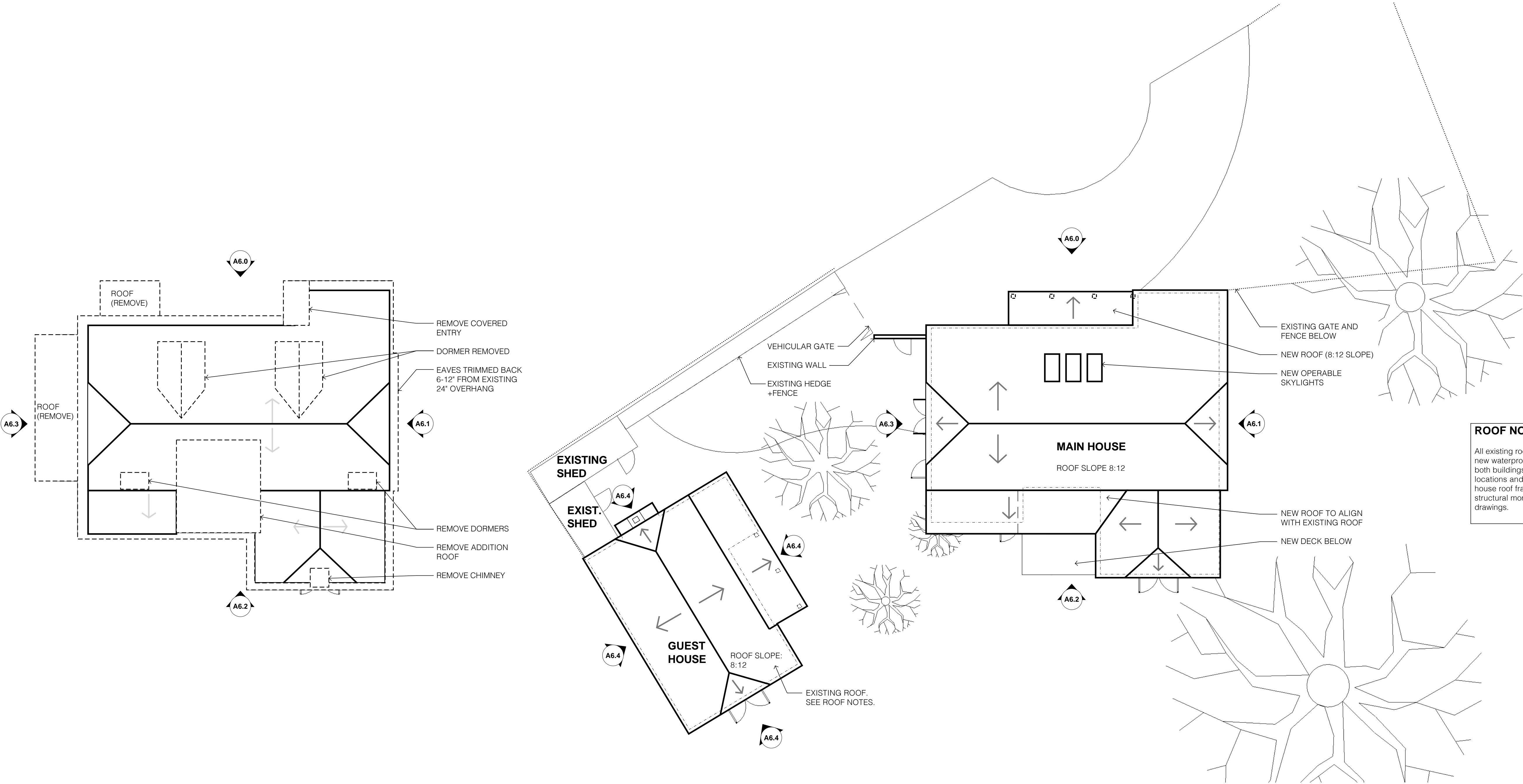
KATE COURTEAU  
5 DUNCAN STREET  
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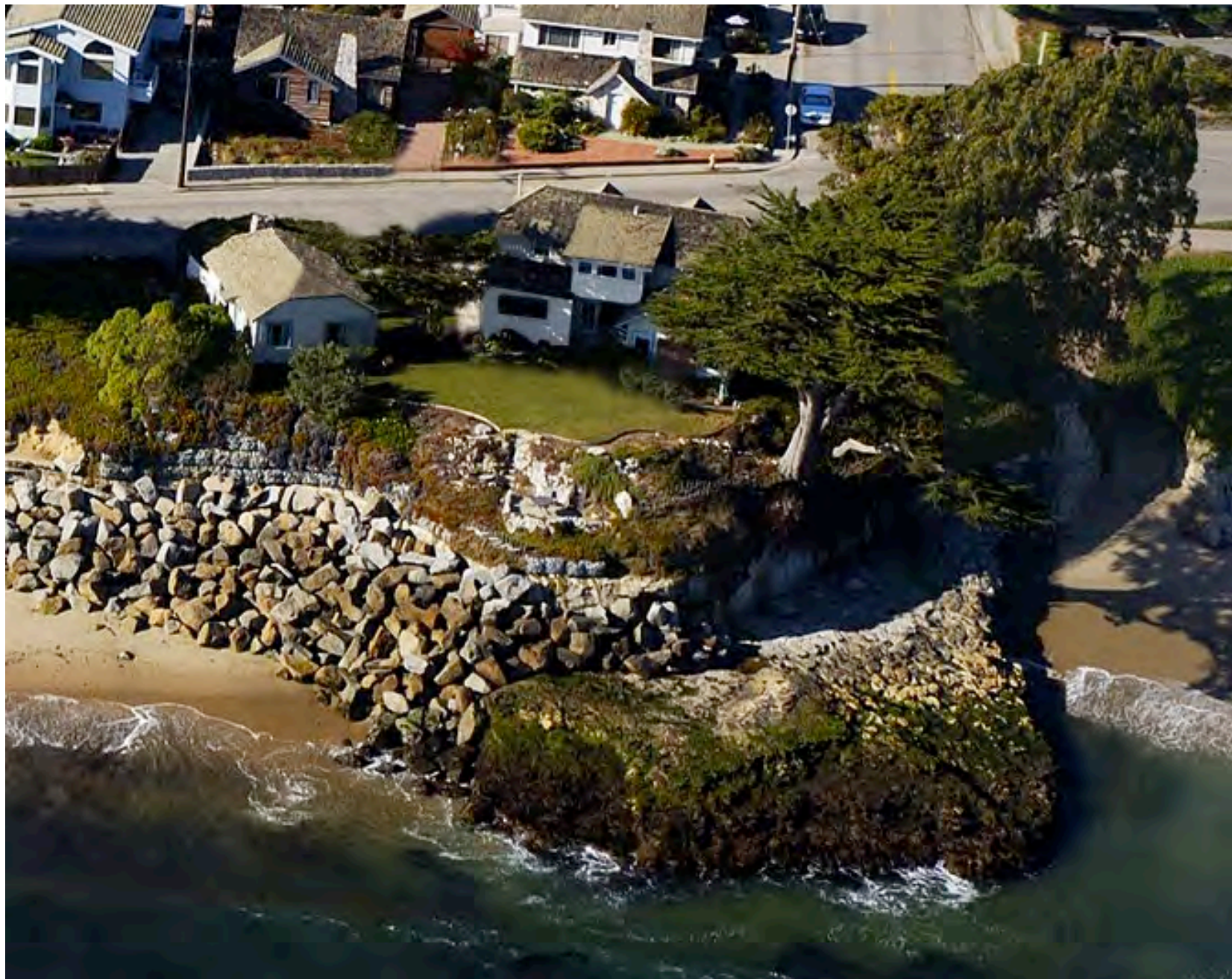
ROOF NOTES:

All existing roofing material to be removed and replaced with new waterproofing, flashing and fire-rated cedar shingles at both buildings. New roof framing will be installed at dormer locations and at areas noted on proposed plan. Guest house roof framing to remain as is, with exception of new structural moment frame, see structural engineering drawings.

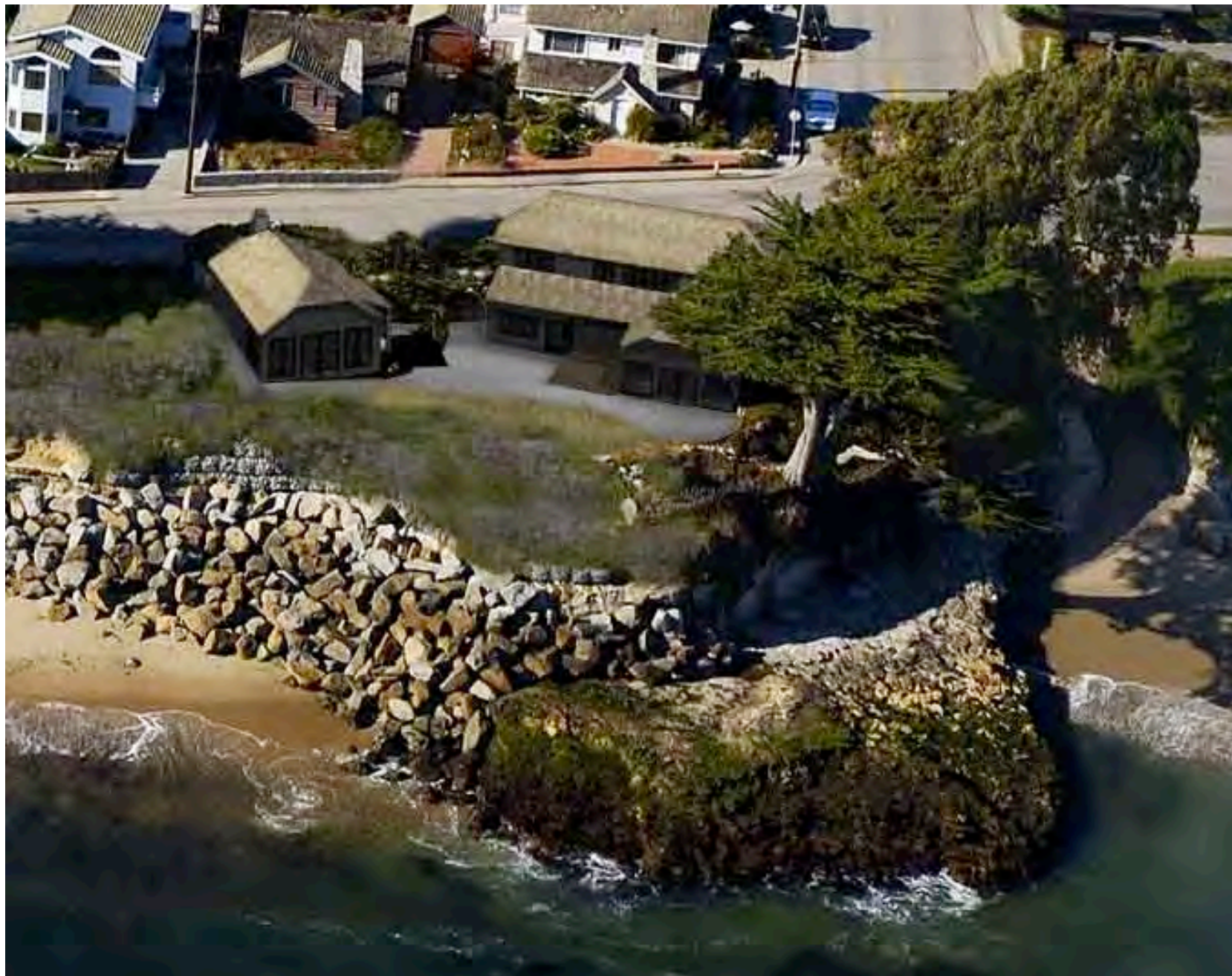


1 DEMOLITION NOTED EXISTING ROOF PLAN - MAIN HOUSE  
1/8" = 1'-0"

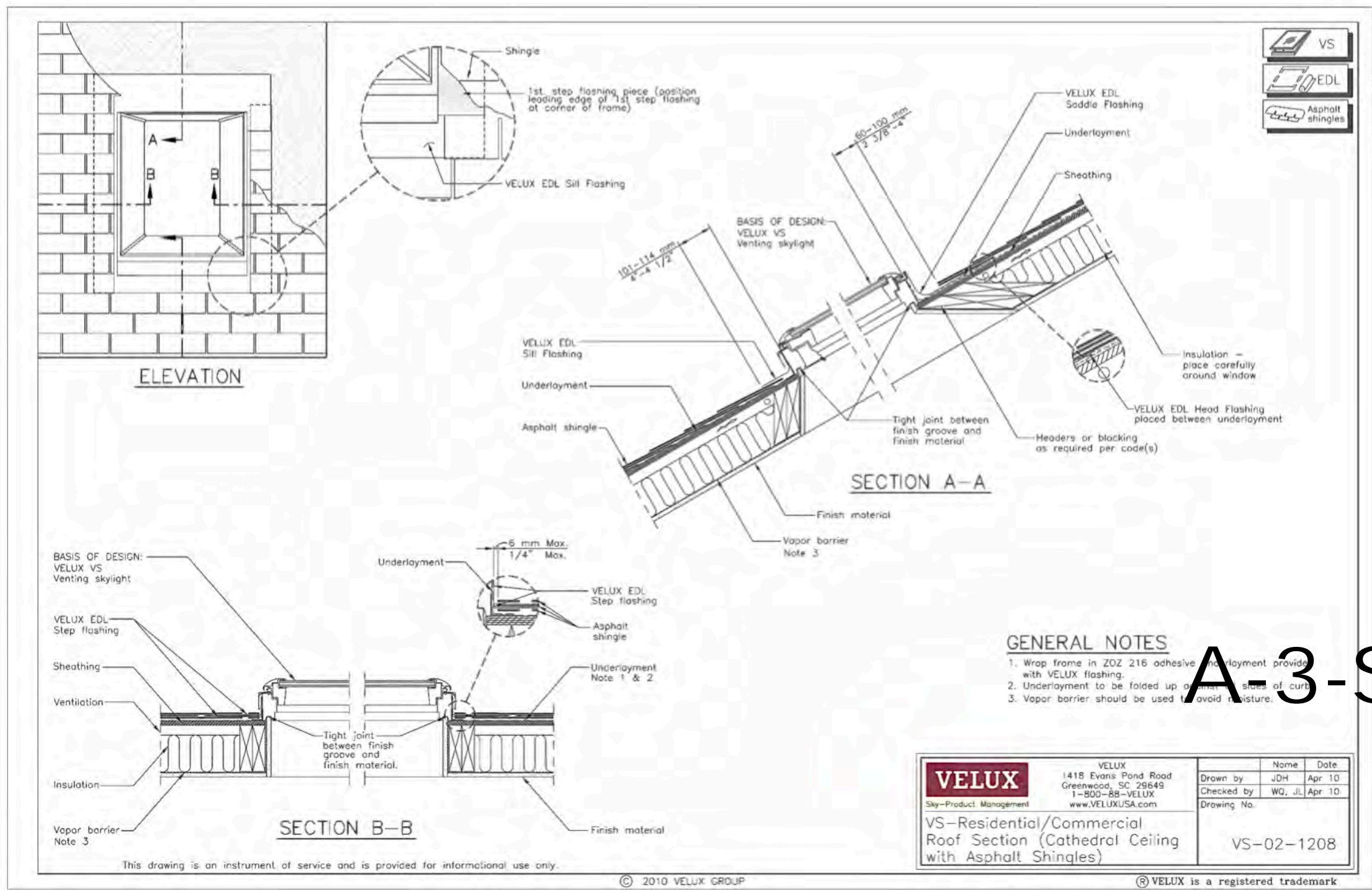
2 PROPOSED ROOF PLAN  
1/8" = 1'-0"



3 PHOTO OF EXISTING PROPERTY



4 RENDERING OF PROPOSED ROOF WORK



5 SKYLIGHT SPECIFICATION SHEET

ISSUES/REVISIONS	DATE
PRELIMINARY REVIEW SET	8/12/15
DISCRETIONARY PERMIT SET	9/4/15

ROOF PLANS

NORTH

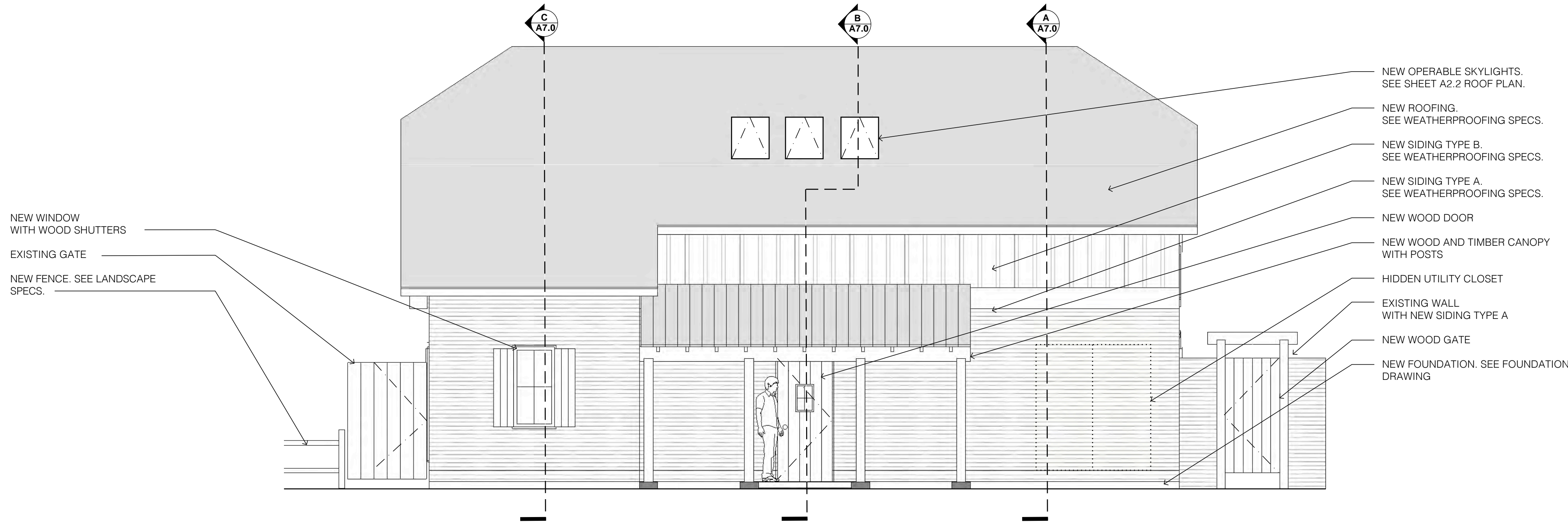
Exhibit 4

A-3-STC-16-0016

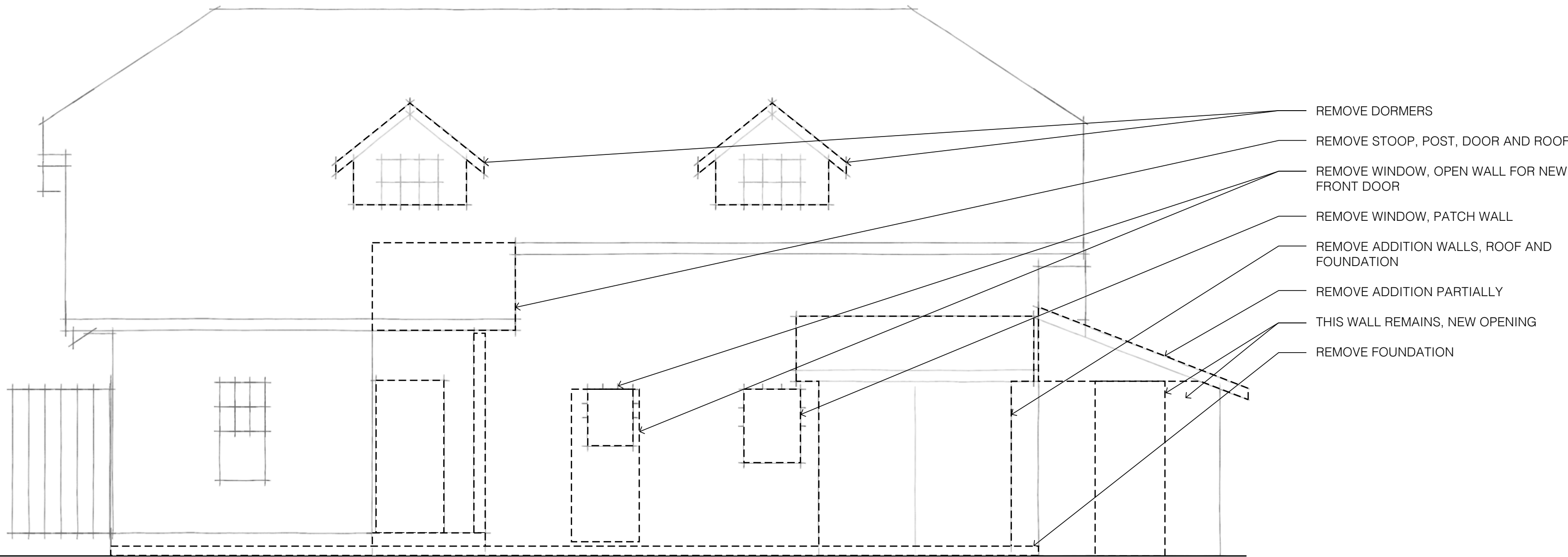
6 of 15

A2.2





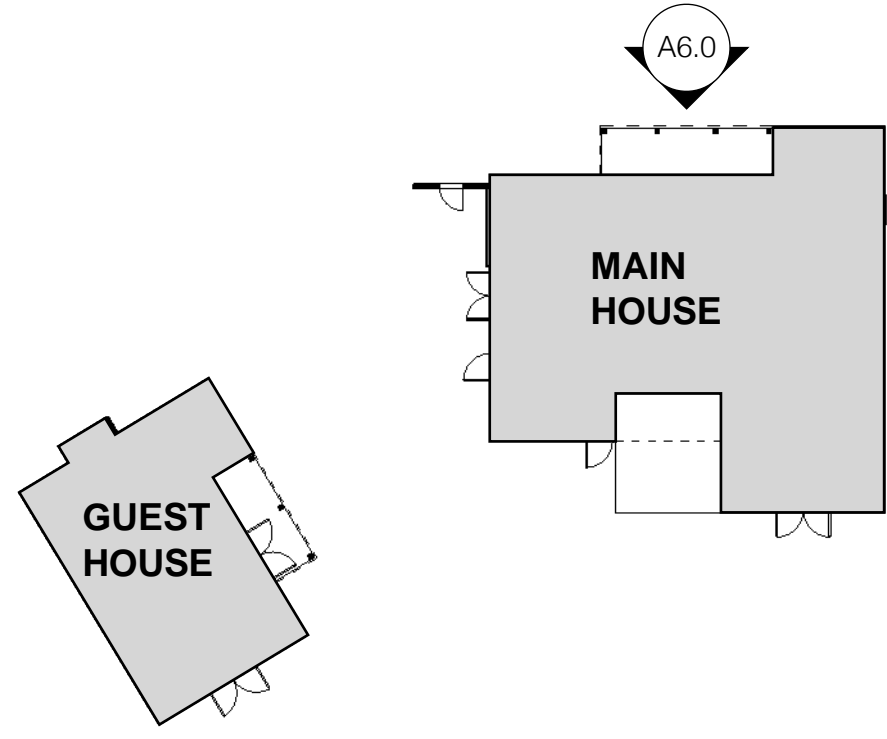
**1 PROPOSED NORTH ELEVATION - MAIN HOUSE**  
1/4" = 1'-0"



**2 DEMOLITION NOTED EXISTING NORTH ELEVATION - MAIN HOUSE**  
1/4" = 1'-0"



**3 REFERENCE PHOTO OF EXISTING NORTH ELEVATION - MAIN HOUSE**



**KEY DIAGRAM**  
1/16" = 1'-0"



## HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060

### DESIGNERS:

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### ARCHITECT / ENGINEER

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### ISSUES/REVISIONS

PRELIMINARY REVIEW SET  
DISCRETIONARY PERMIT SET

### DATE

8/12/15  
9/4/15

## NORTH ELEVATION MAIN HOUSE

### WEATHERPROOFING SPECIFICATIONS:

#### ROOFING:

All existing roofing material to be removed back to sheathing.  
Existing sheathing to be inspected and replaced or repaired as needed.

New building paper and fire-rated class B cedar shingles.  
New copper flashing, copper gutter and downspouts.

#### SIDING:

All existing siding to be removed back to framing.

New sheathing, new house wrap and 1/4" rainscreen gap installed.

Siding type a: 3" horizontal bevel profile.  
Siding type b: 8" vertical board and batten

All siding is factory finished with japanese torching method called shou sugi ban.

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ISSUES/REVISIONS	DATE
PRELIMINARY REVIEW SET	8/12/15
DISCRETIONARY PERMIT SET	9/4/15

EAST ELEVATION  
MAIN HOUSE

Exhibit 4  
A-3-STC-16-0016  
8 of 15  
A6.1

WEATHERPROOFING SPECIFICATIONS:

ROOFING:

All existing roofing material to be removed back to sheathing. Existing sheathing to be inspected and replaced or repaired as needed.

New building paper and fire-rated class B cedar shingles  
new copper flashing, copper gutter and downspouts.

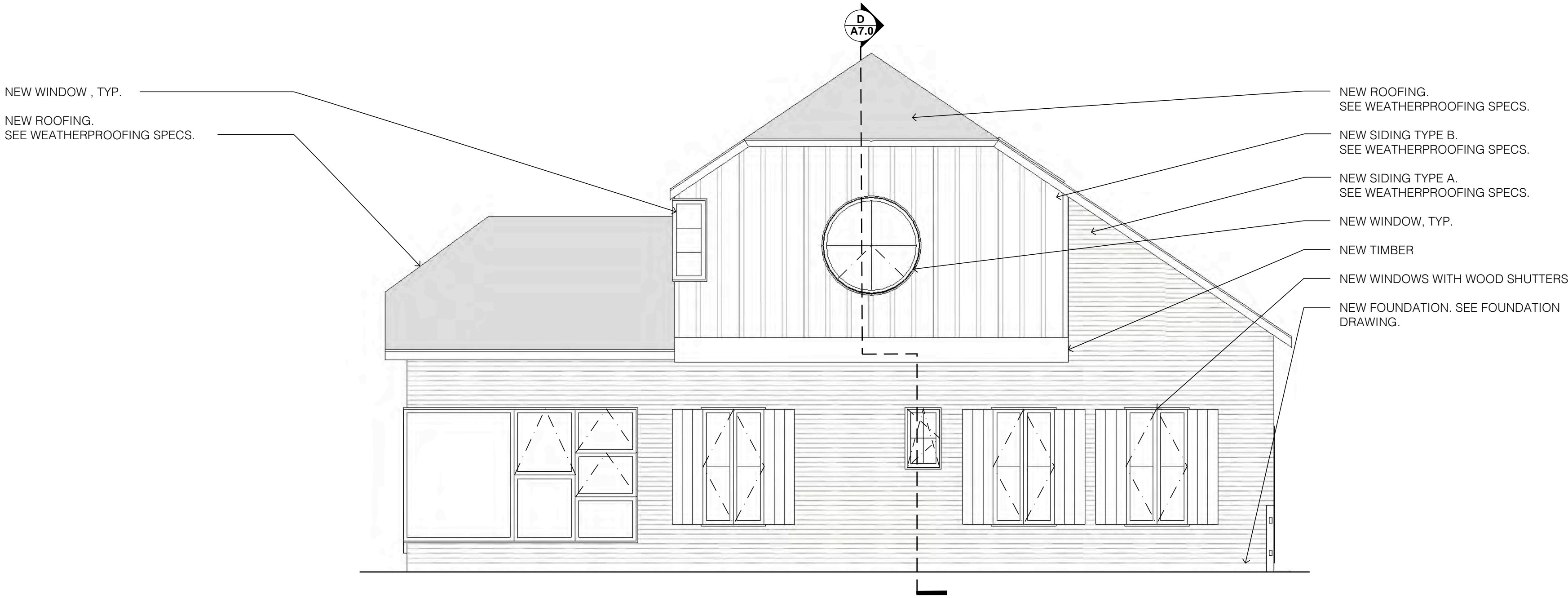
SIDING:

All existing siding to be removed back to framing.

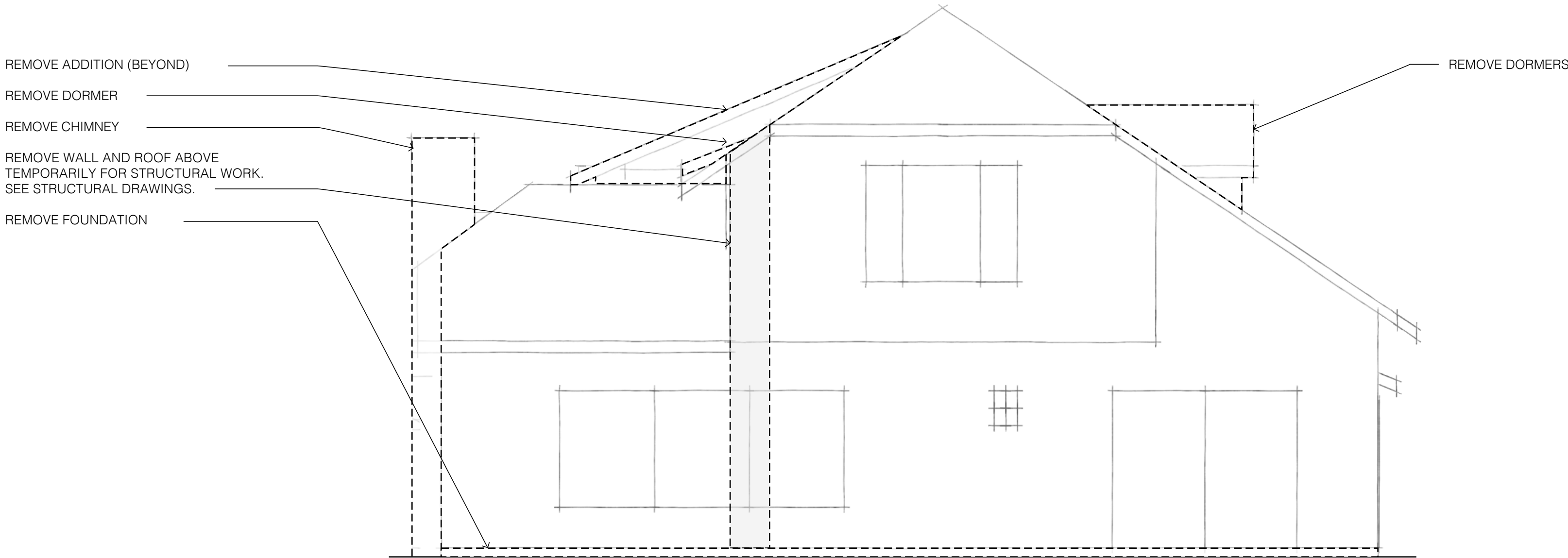
New sheathing, new house wrap and 1/4" rainscreen gap installed.

Siding type a: 3" horizontal bevel profile  
Siding type b: 8" vertical board and batten

All siding is factory finished with japanese torching method called shou sugi ban.



1 PROPOSED EAST ELEVATION - MAIN HOUSE  
1/4" = 1'-0"



2 DEMOLITION NOTED EXISTING EAST ELEVATION - MAIN HOUSE  
1/4" = 1'-0"



3 REFERENCE PHOTO OF EXISTING EAST ELEVATION - MAIN HOUSE



HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060

DESIGNERS:

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ISSUES/REVISIONS	DATE
PRELIMINARY REVIEW SET	8/12/15
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SOUTH ELEVATION  
MAIN HOUSE

Exhibit 4  
A-3-STC-16-0016  
9 of 15  
A6.2

WEATHERPROOFING SPECIFICATIONS:

ROOFING:

All existing roofing material to be removed back to sheathing. Existing sheathing to be inspected and replaced or repaired as needed.

New building paper and fire-rated class B cedar shingles, new copper flashing, copper gutter and downspouts.

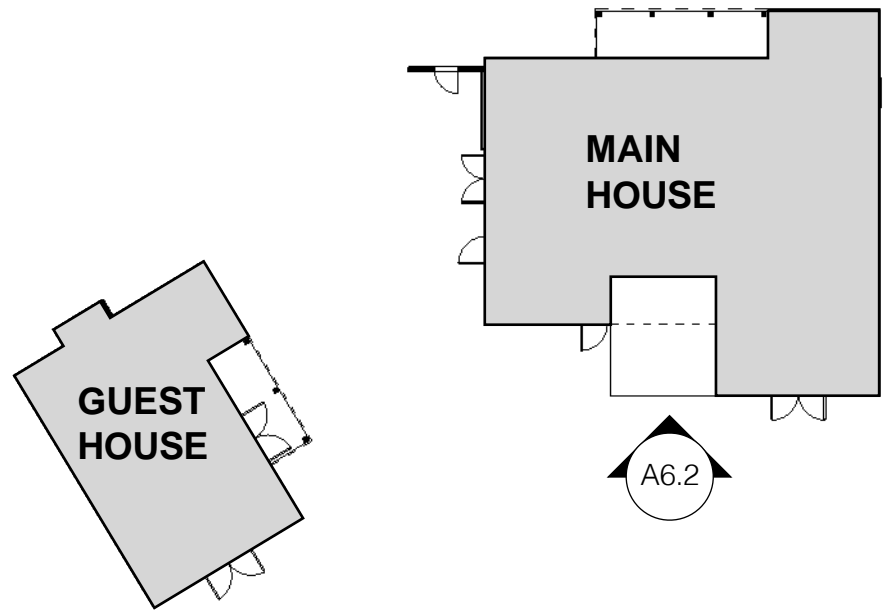
SIDING:

All existing siding to be removed back to framing.

New sheathing, new house wrap and 1/4" rainscreen gap installed.

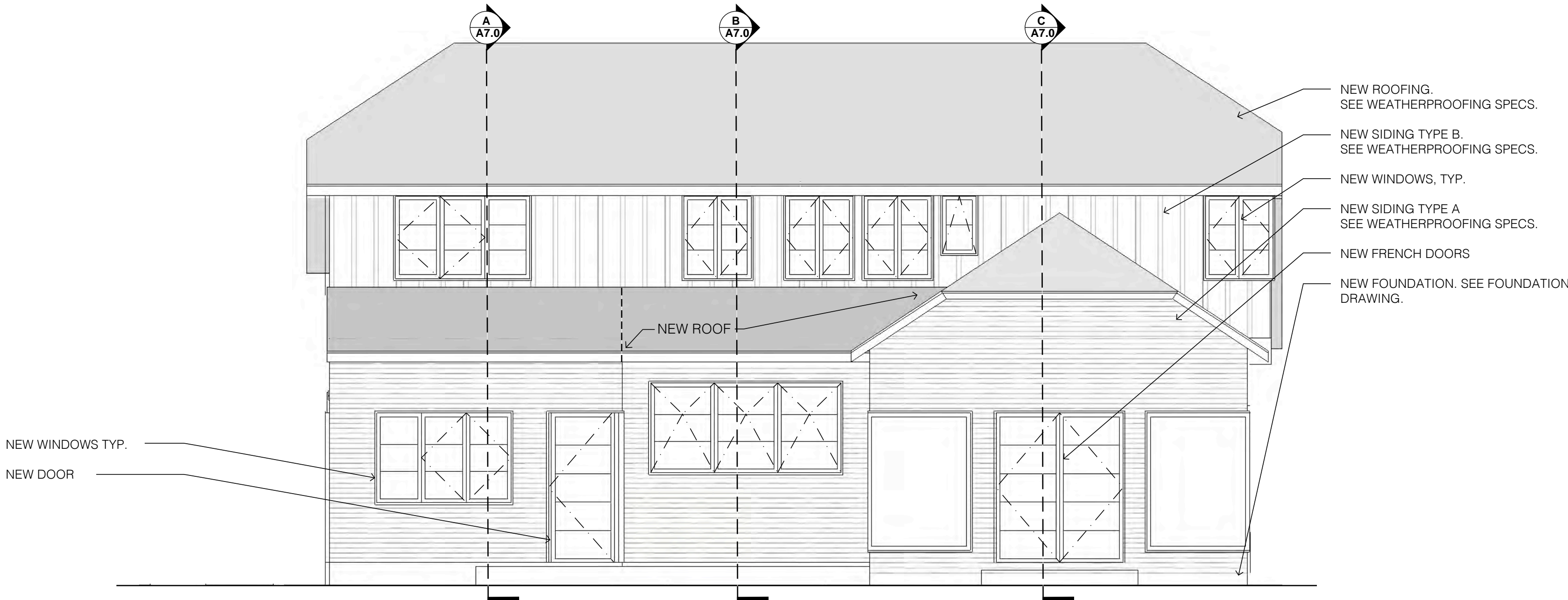
Siding type a: 3" horizontal bevel profile  
Siding type b: 8" vertical board and batten

All siding is factory finished with japanese torching method called shou sugi ban.

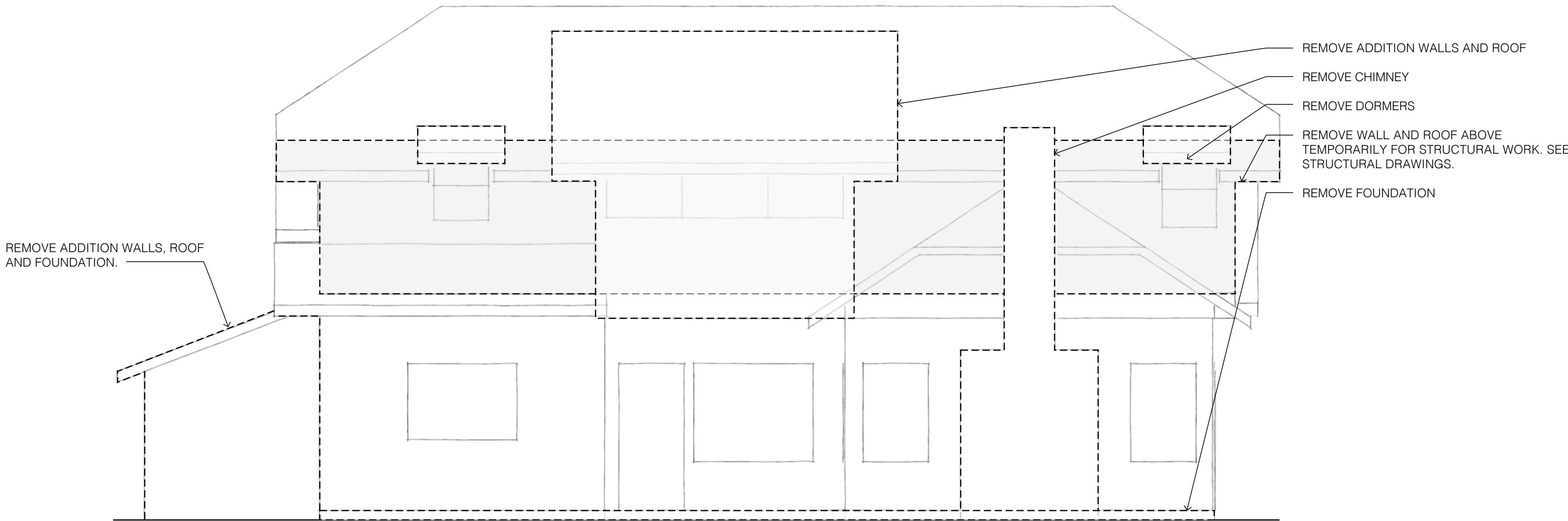


KEY DIAGRAM

1/16" = 1'-0"



1 PROPOSED SOUTH ELEVATION - MAIN HOUSE  
1/4" = 1'-0"



2 DEMOLITION NOTED EXISTING SOUTH ELEVATION - MAIN HOUSE  
1/4" = 1'-0"



3 REFERENCE PHOTO OF EXISTING SOUTH ELEVATION - MAIN HOUSE



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ISSUES/REVISIONS	DATE
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WEST ELEVATION  
MAIN HOUSE

Exhibit 4  
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A6.3

WEATHERPROOFING SPECIFICATIONS:

ROOFING:

All existing roofing material to be removed back to sheathing. Existing sheathing to be inspected and replaced or repaired as needed.

New building paper and fire-rated class B cedar shingles new copper flashing, copper gutter and downspouts.

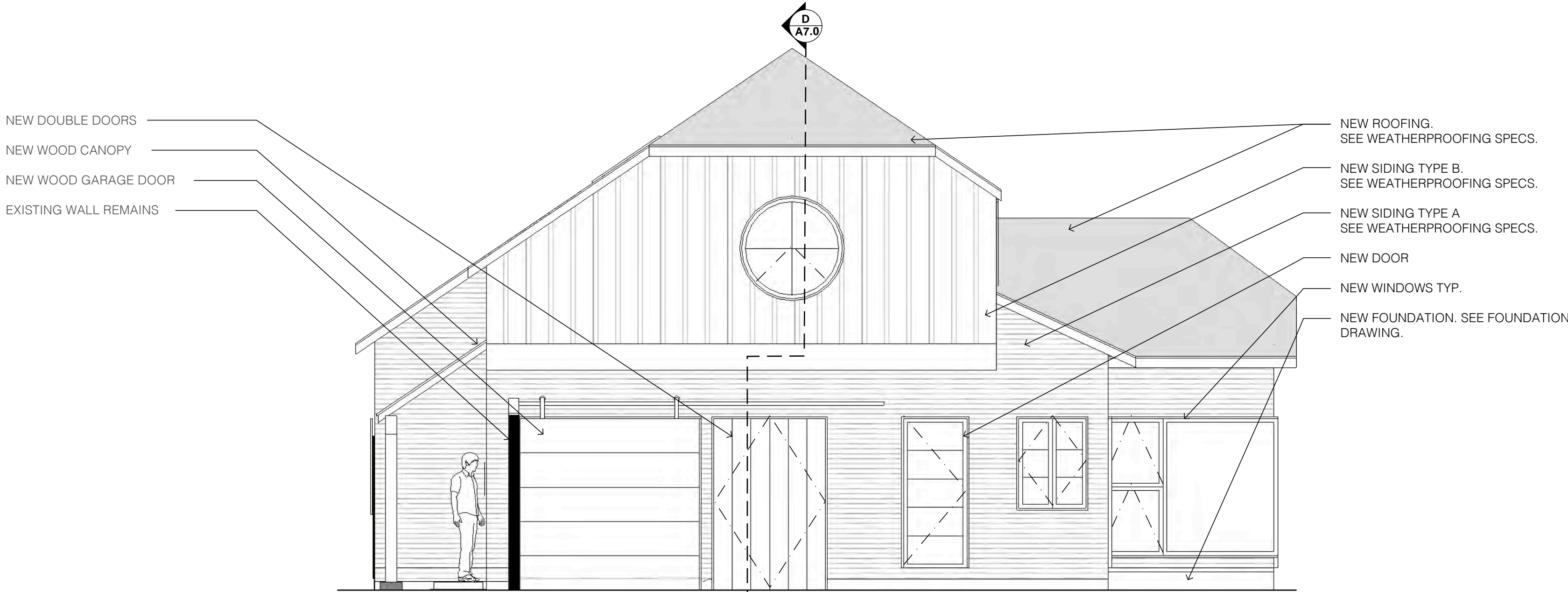
SIDING:

All existing siding to be removed back to framing.

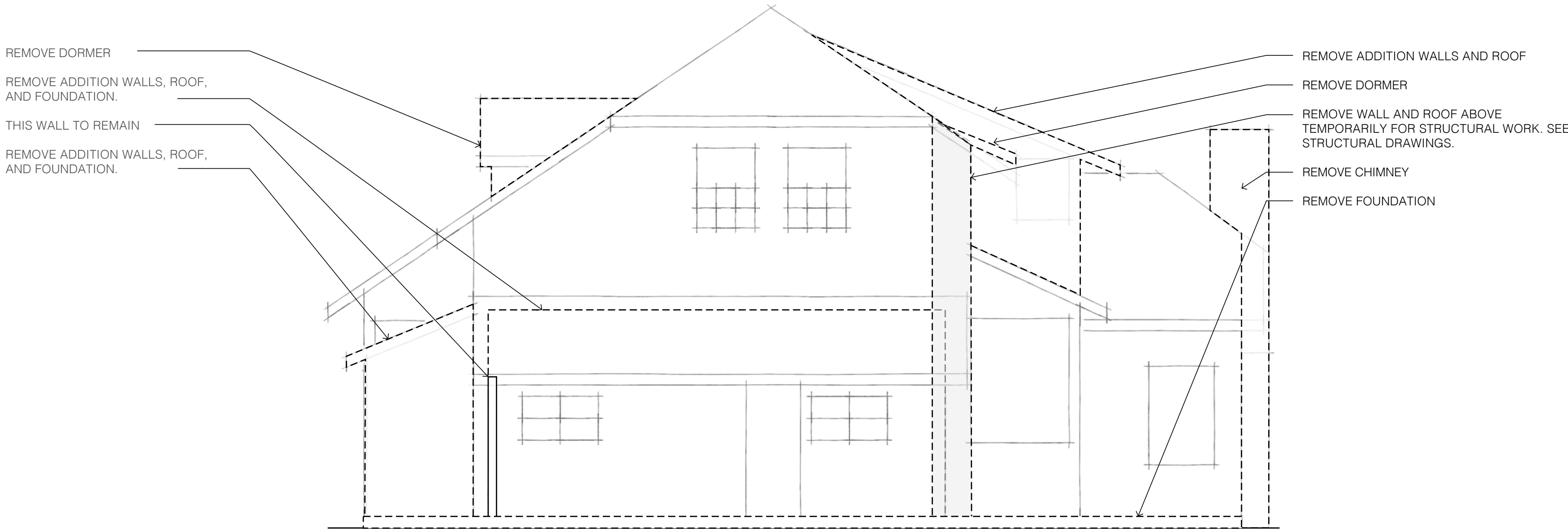
New sheathing, new house wrap and 1/4" rainscreen gap installed.

Siding type a: 3" horizontal bevel profile  
Siding type b: 8" vertical board and batten

All siding is factory finished with japanese torching method called shou sugi ban.



1 PROPOSED WEST ELEVATION - MAIN HOUSE  
1/4" = 1'-0"

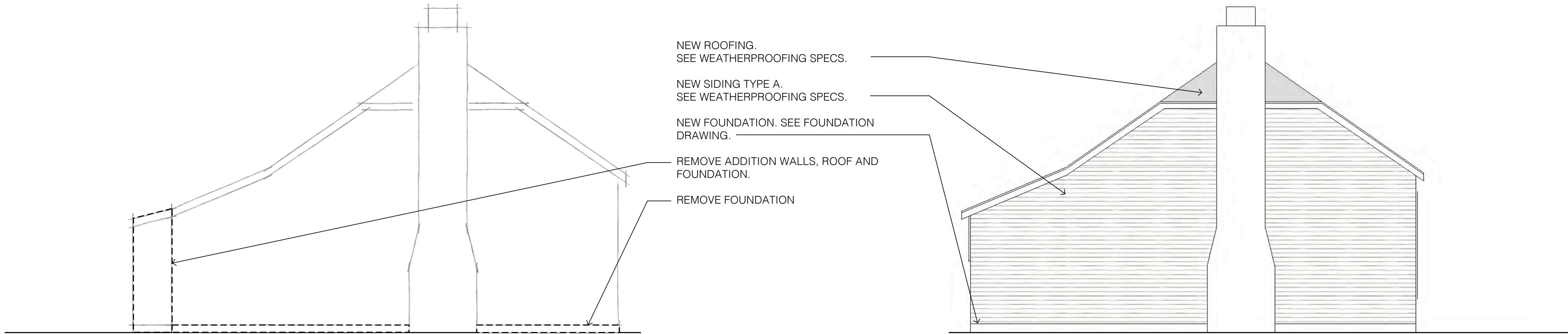


2 DEMOLITION NOTED EXISTING WEST ELEVATION - MAIN HOUSE  
1/4" = 1'-0"

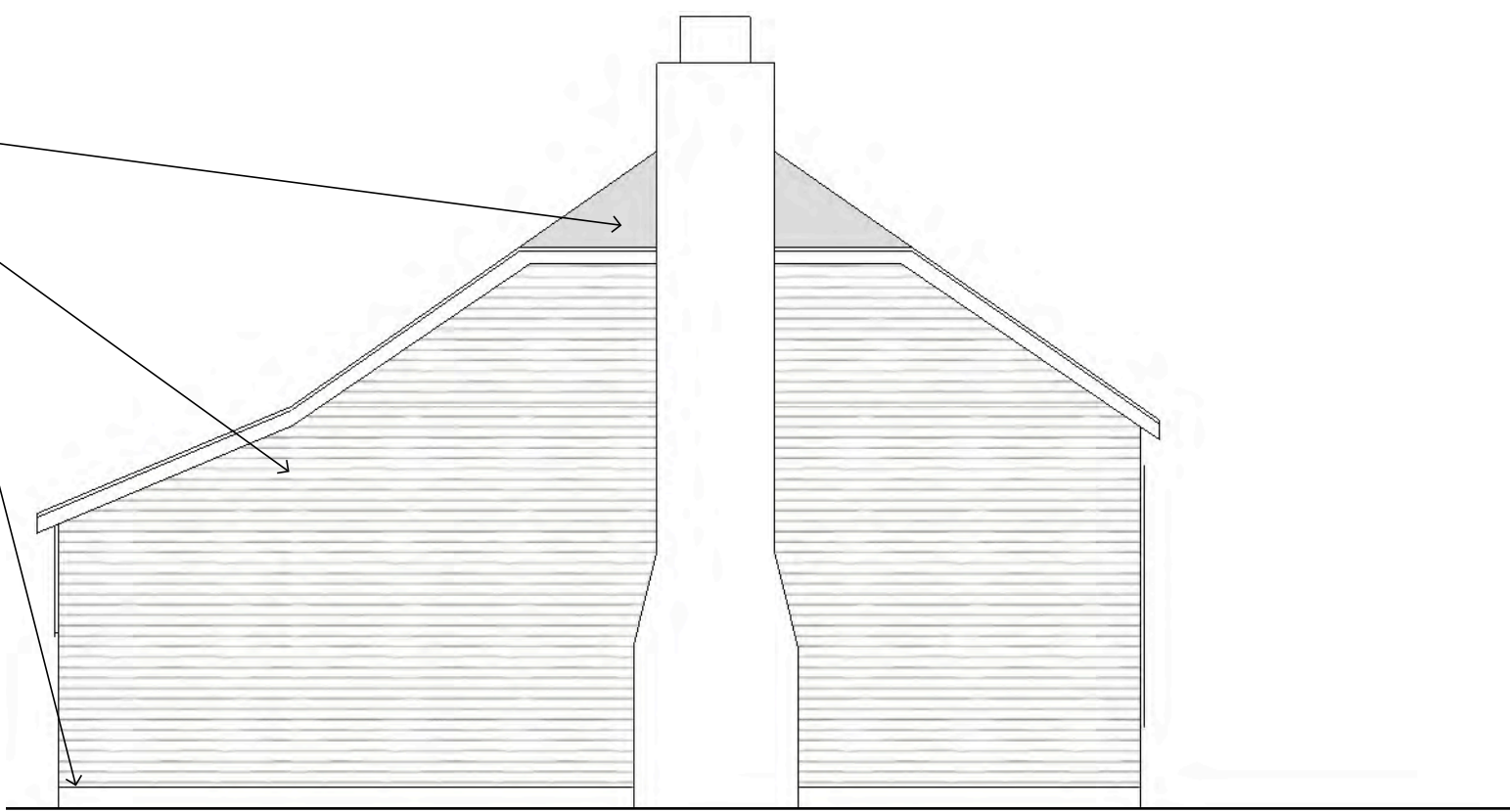


3 REFERENCE PHOTO OF EXISTING WEST ELEVATION - MAIN HOUSE





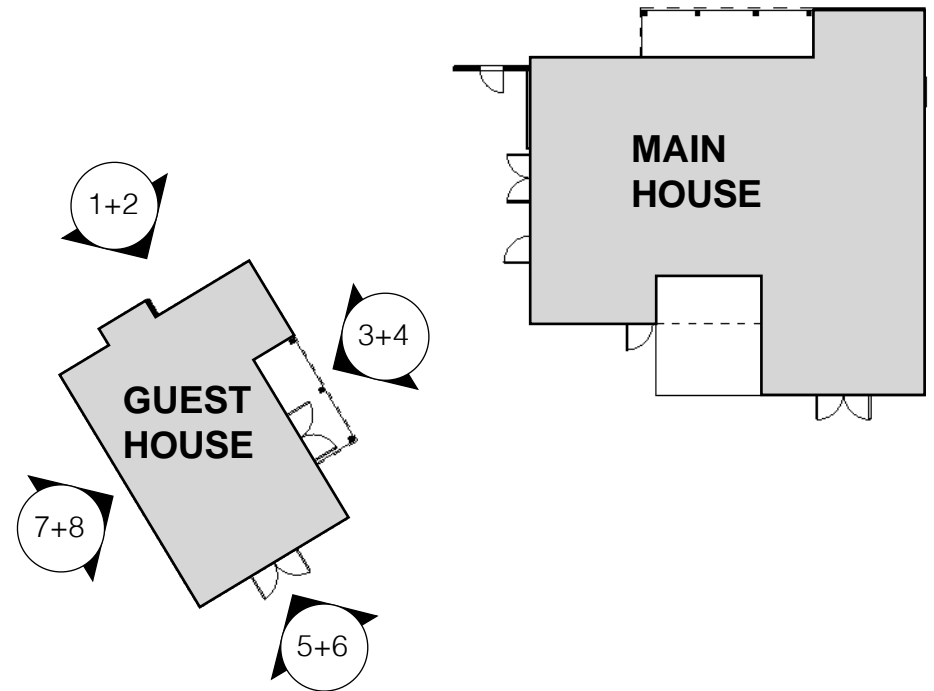
**1 EXISTING NORTH ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



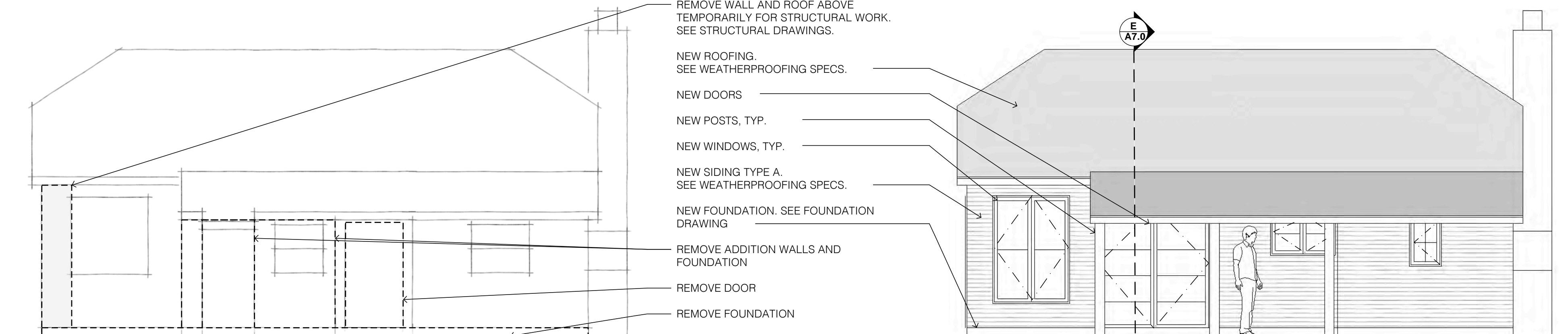
**2 PROPOSED NORTH ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



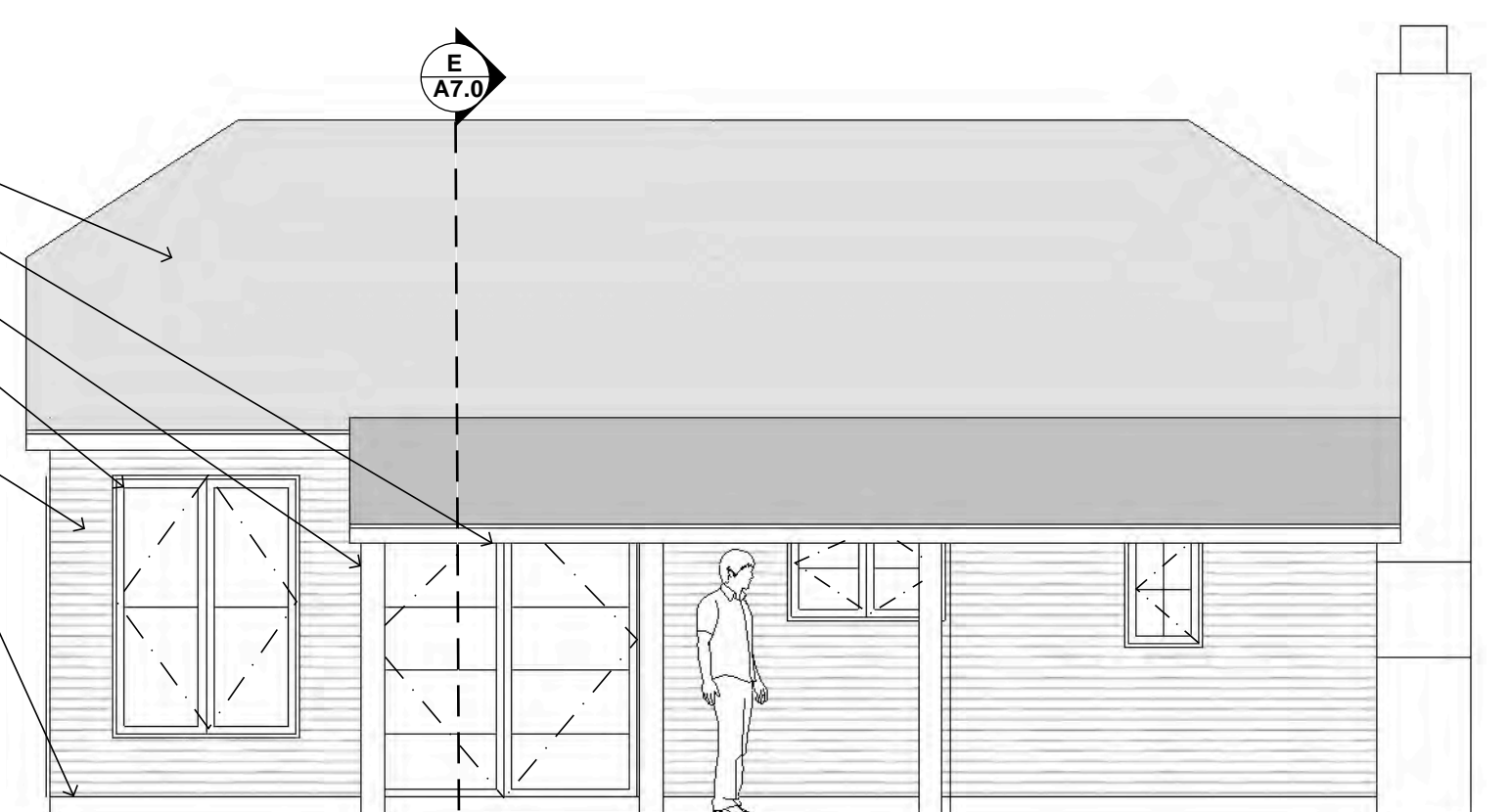
**REFERENCE PHOTO OF EXIST. NORTH ELEV. - GUEST HOUSE**



**KEY DIAGRAM**  
1/16" = 1'-0"



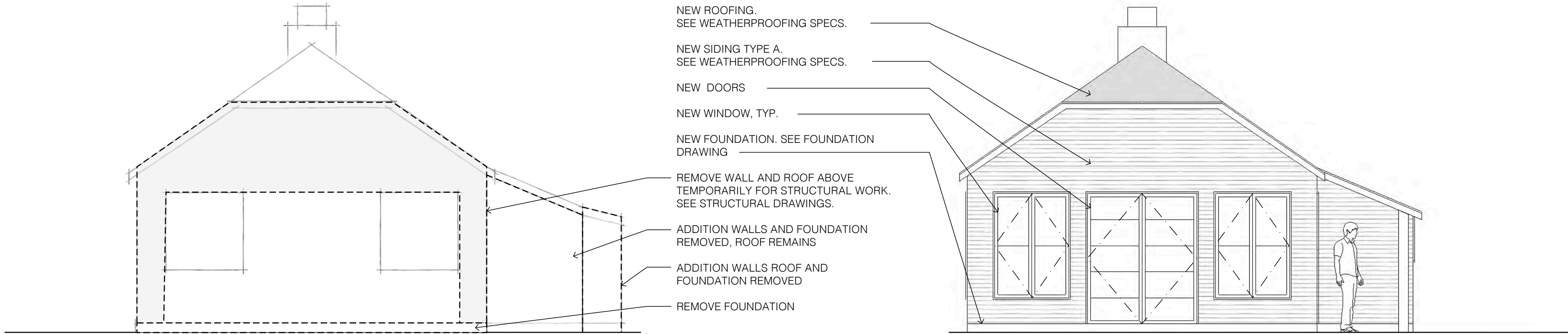
**3 EXISTING EAST ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



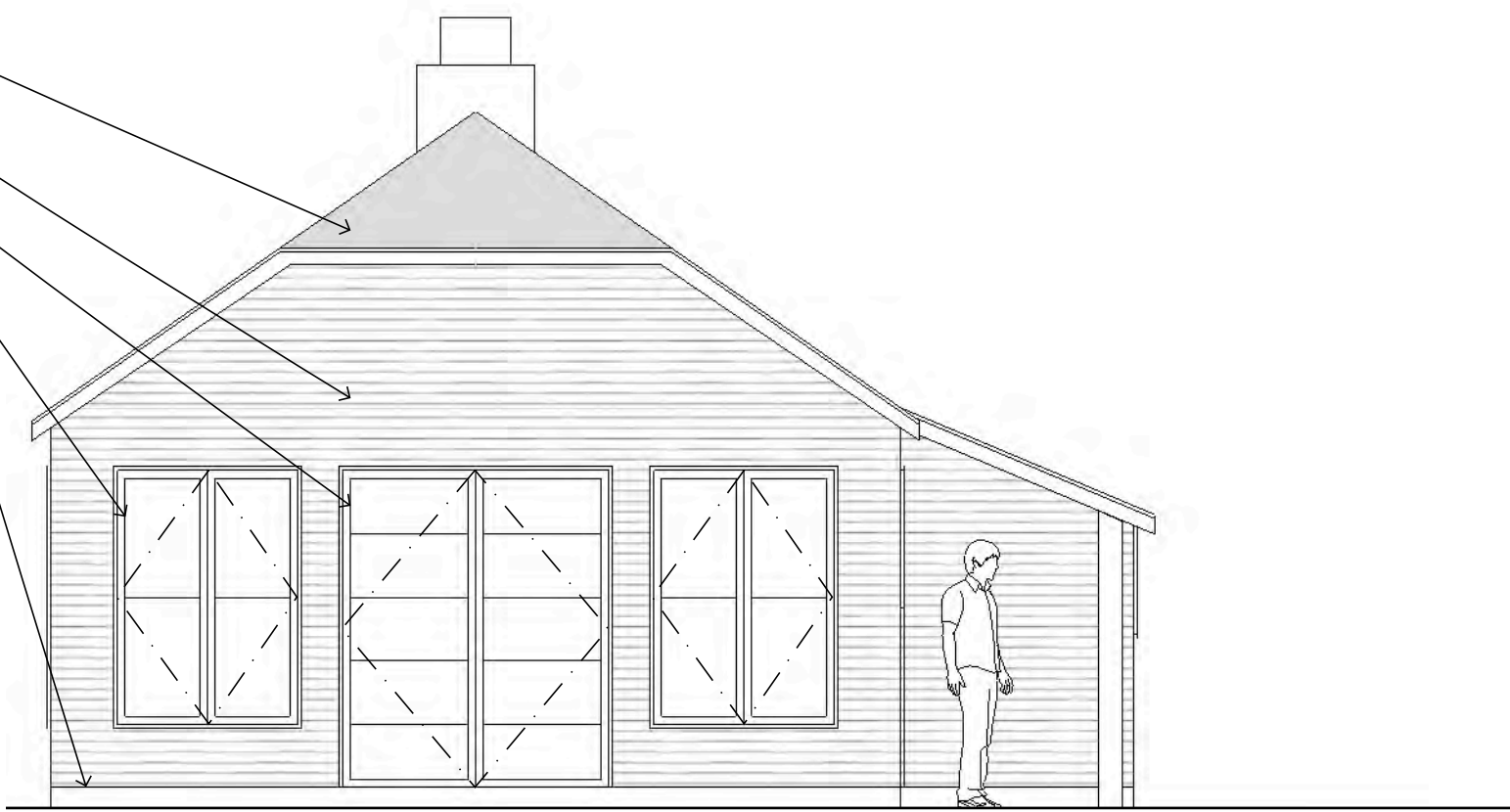
**4 PROPOSED EAST ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



**REFERENCE PHOTO OF EXISTING EAST ELEVATION - GUEST HOUSE**



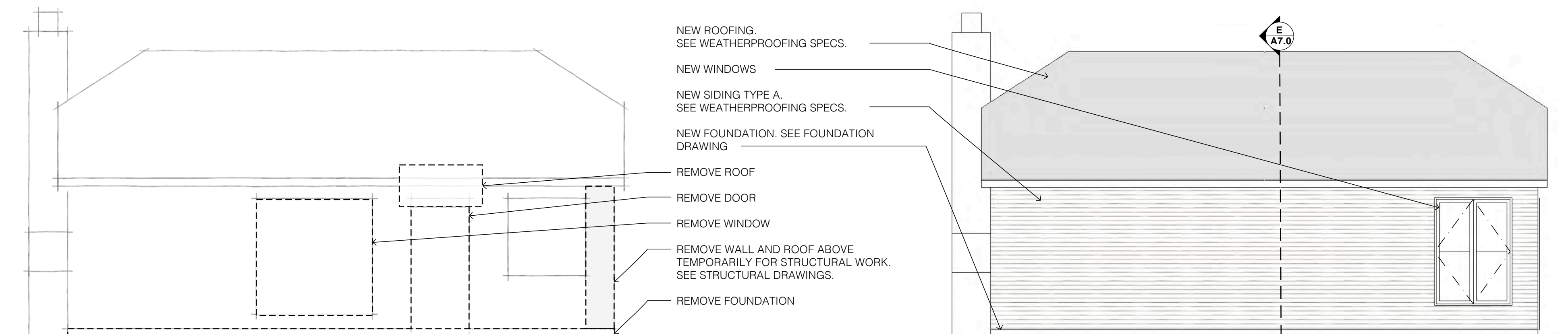
**5 EXISTING SOUTH ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



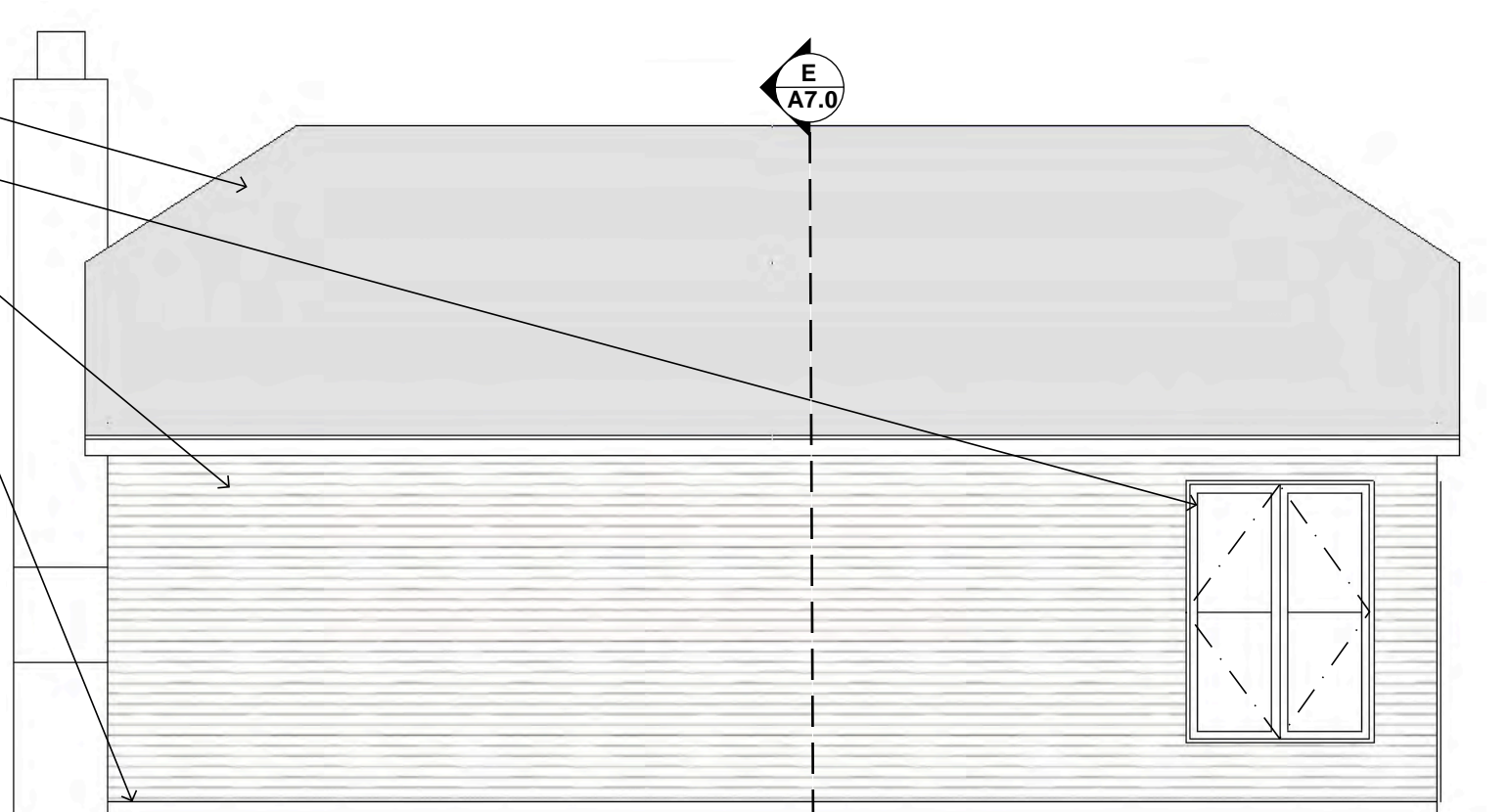
**6 PROPOSED SOUTH ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



**REFERENCE PHOTO OF EXISTING SOUTH ELEVATION - GUEST HOUSE**



**7 EXISTING WEST ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



**8 PROPOSED WEST ELEVATION - GUEST HOUSE**  
1/4" = 1'-0"



**REFERENCE PHOTO OF EXISTING WEST ELEVATION - GUEST HOUSE**

**HONJO RESIDENCE**

**1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060**

**DESIGNERS:**

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**ISSUES/REVISIONS**

PRELIMINARY REVIEW SET  
DISCRETIONARY PERMIT SET

**DATE**

8/12/15  
9/4/15

**GUEST HOUSE  
ELEVATIONS**

Exhibit 4  
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A6.4



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Exhibit 4  
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A7.0

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HONJO RESIDENCE

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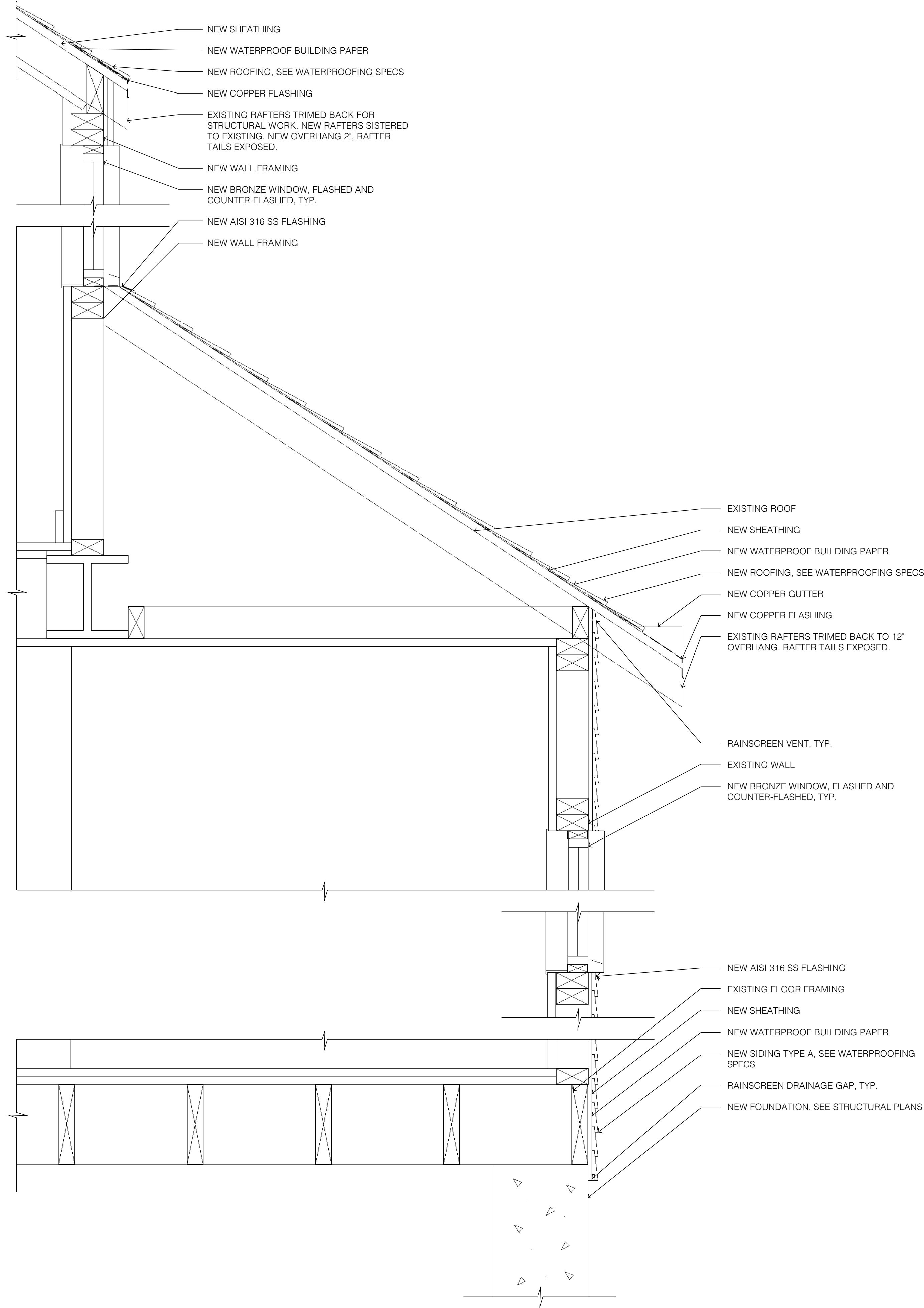
PAUL ENDRES  
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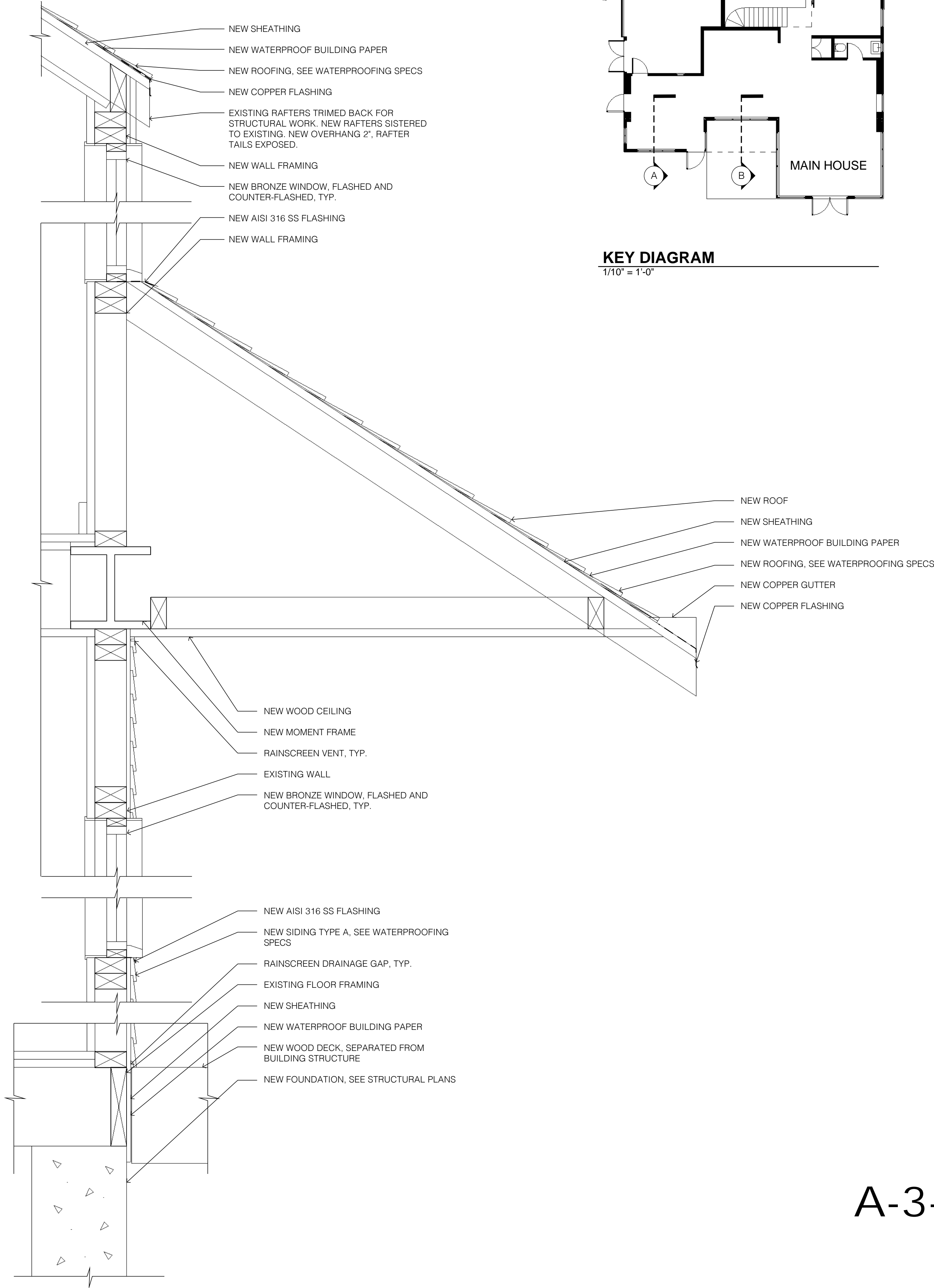
EXTERIOR DETAILS

Exhibit 4  
A-3-STC-16-0016  
13 of 15  
A8.0

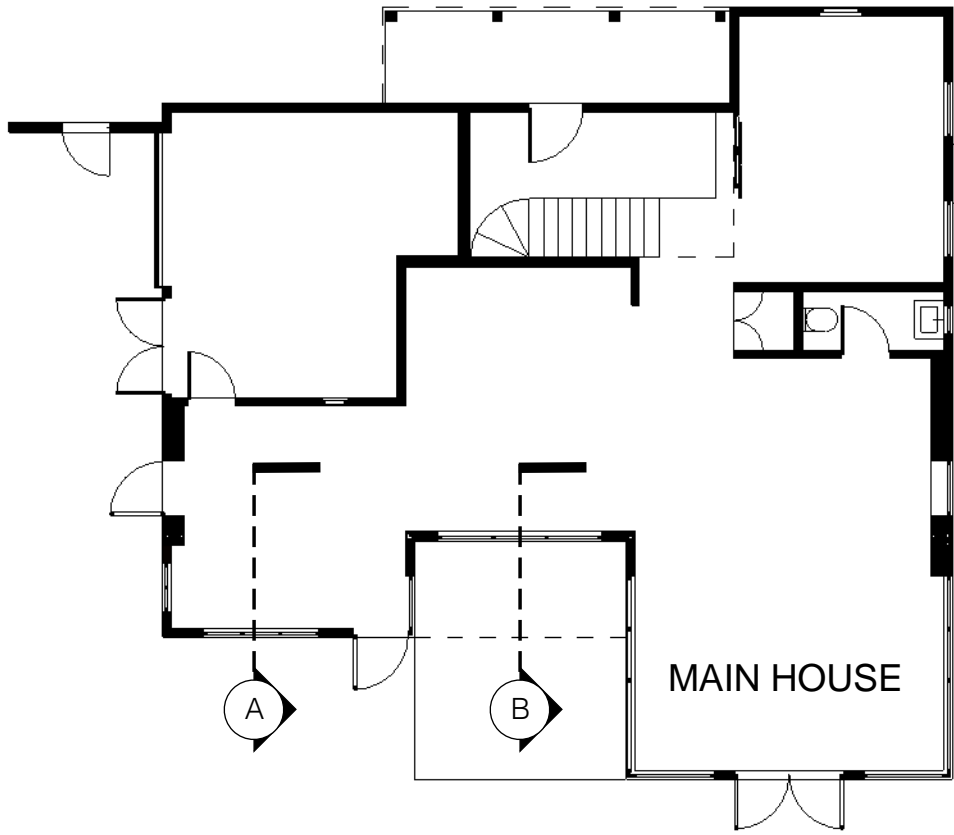
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**A** WALL SECTION A - MAIN HOUSE  
1 1/2" = 1'-0"



**B** WALL SECTION B - MAIN HOUSE  
1 1/2" = 1'-0"



**KEY DIAGRAM**  
1/10" = 1'-0"





1

PHOTO RENDERING OF PROPOSED PROPERTY FROM NORTH



2

PHOTO RENDERING OF PROPOSED PROPERTY FROM NORTHEAST

HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060

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ISSUES/REVISIONS

PRELIMINARY REVIEW SET 8/12/15  
DISCRETIONARY PERMIT SET 9/4/15

DATE

RENDERED VIEWS

Exhibit 4  
A-3-STC-16-0016  
14 of 15  
A9.0





1 PHOTO RENDERING OF PROPOSED PROPERTY FROM WEST



2 PHOTO RENDERING OF PROPOSED PROPERTY FROM EAST

HONJO RESIDENCE

1307 WEST CLIFF DRIVE  
SANTA CRUZ, CA 95060

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ISSUES/REVISIONS	DATE
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RENDERED VIEWS



Exhibit 4  
A-3-STC-16-0016  
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A9.1





Dept. of Planning and Community Development  
809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

**Notification of Final Local Action  
on Coastal Permits**

**ACTION NOTICE**

**Date:** January 19, 2016

**To:** Attn: Ryan Moroney, Coastal Planner  
California Coastal Commission  
Central Coast District  
725 Front St., Ste 300  
Santa Cruz, CA 95060

REFERENCE #

3-STC-16-0054

APPEAL PERIOD

1/25/16 - 2/5/16

**From:** City of Santa Cruz Planning Department

**RECEIVED**

JAN 22 2016

Please be advised of the following actions:

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

☒ **Zoning Administrator hearing of** January 6, 2016  
(Date)

☒ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case:

File No CP15-0157

Address: 1307 West Cliff Drive

☒ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ **Planning Commission hearing of** \_\_\_\_\_  
(date)

☐ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case numbers:

File No.: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ **City Council hearing of** \_\_\_\_\_  
(date)

☐ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case numbers:

File No.: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ This project is not appealable to the California Coastal Commission. Section 24.04186.

Action Agenda for coastal permits acted upon is attached.



## EXHIBIT "B"

### FINDINGS FOR APPROVAL FOR THE PROJECT ON PROPERTY AT

1307 West Cliff Dr.—Application #CP15-0157

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the OF-R/CZ-O/SP-O/WCD-O zone district.**

#### **FINDINGS**

##### **Coastal Permit, Section 24.08.250**

1. **Maintain views between the sea and the first public roadway parallel to the sea.**

The improvements to the residential structures will not affect coastal views as the location, massing, and volume of the structures will remain unchanged.

2. **Protect vegetation, natural habitats and natural resources consistent with the Local Coastal Land Use Plan.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

3. **Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan.**

The project site is within the West Cliff Drive Overlay zone. The standards include special requirements for calculating height, floor area ratio, setbacks, and landscaping. The project as proposed is consistent with the WCD development standards.

4. **Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.**

This project will not affect public access to the coast therefore, this finding is not applicable.

5. **Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate.**

This project will not affect visitor- serving needs therefore, this finding is not applicable.

- 6. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.**

This is a proposal to remodel an existing legal nonconforming single family dwelling; therefore this finding is not applicable.

**Shoreline Protection Overlay District, Section 24.10.2430**

- 7. The project protects trees and vegetation and sensitive wildlife habitat.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

- 8. The project is consistent with the following criteria for bluff or cliff development:**

- a. The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.**

The project involves the remodel of an existing legal nonconforming single-family house that has been located on the coastal bluff since 1940. The proposed improvements to the structure, including a new foundation and seismic system will assure stability and structural integrity of the home's expected economic life span and will not impact any natural land forms.

A geotechnical investigation prepared by Haro, Kasunich and Associates explored and evaluated the surface and subsurface soil conditions on the site, and provides geotechnical criteria for the design and construction of the new foundation elements for the proposed project. The new foundation elements are to be embedded two feet below existing grade to bear upon the dense cemented sands. The remodeled structure will also include full gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

An approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing 1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

As part of the remodel, the applicant is proposing to replace the foundations that are failing as well as new lateral elements to help improve seismic performance. Deputy Building Official Eric Simonson inspected the structures and found that the foundations are failing due to the poor soils conditions that the original 1940s buildings are sitting on, as well as the lack of proper reinforcements in the concrete. He also reviewed the geotechnical investigation prepared by Haro, Kasunich and Associates and agreed with their recommendations. It is his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants.

- b. The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

- c. The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.**

The remodel of the existing legal nonconforming single-family house utilizes the existing footprint and will not alter the existing cliff or bluff top, therefore not interfering with sand movement.

- d. The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.**

An approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing

1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

The project proposes the installation of a small retaining wall along the outboard edge of the existing driveway. The driveway is currently being undermined by runoff from surface drainage due to a West Cliff Drive storm drain outlet that has frequently overflowed. In order to maintain the driveway and prevent further erosion, a soil pin wall has been designed and recommended by Haro, Kasunich and Associates Inc. A supplemental geotechnical report has been included as part of the submittal. No sea wall is proposed as part of this application.

- e. **The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing a full gutter system to collect and control roof runoff, directing it toward the street storm drain system.

Additionally, an approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing 1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

9. **The project provides maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title.**

The applicant will be required to provide erosion control measures with the building permit application materials. The remodeled structure will also include full gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

10. **The project maintains public view corridors between the sea and the first public roadway parallel to the sea and maintains natural views of the coastline.**

The improvements to the residential structures will not affect coastal views as the footprint, massing, and volume of the structures will remain unchanged.

**11. The project protects paleontological resources as prescribed in the Land Use Plan.**

The site is not located within a mapped paleontological sensitive area.

**12. The project is compatible with the established physical scale of the area.**

The project involves a remodel of an existing single-family house with no additions or increase in massing or volume. The 75 year old structure will remain compatible with the established physical scale of the area.

**13. The project is consistent with the design review guidelines of this title and the policies of any applicable area plan.**

The property is located in the West Cliff Drive Overlay District which has specific regulations regarding building height, building envelope, setbacks, floor area ratio (FAR), parking, landscaping, and fencing. The project involves the remodel of an existing single-family house with no additions or increase in massing or volume; therefore with no expansion most of the regulations are not applicable for this project. The project does propose some new landscaping, and meets the West Cliff Overlay standards by landscaping unpaved portions of the exterior and side yards, removing non-native plants and replanting with native coastal bluff meadow planting. Existing fencing is proposed to remain.

**14. The project is consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.**

The project site is within the Coastal Zone Overlay District, the Shoreline Protection Overlay District, and the West Cliff Drive Overlay District as defined in the General Plan/Local Coastal Plan. The project is consistent with the applicable policies in the General Plan/Local Coastal Plan in that the legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use, no additional units are being proposed, and the main house and guest unit are proposed to maintain their current footprints, with some later additions proposed to be removed. The interior remodel of the house will reduce the number of bedrooms from four to two, so the intensity of the use is being reduced. In order to maintain the legal nonconforming status of the residential use, the structure will remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are proposed to remain, and that the remodel does not qualify as a demolition.

The proposed improvements to the structures qualify as normal and routine maintenance with the exception of the replacement of the foundation and new lateral elements to help improve seismic performance. The Deputy Building Official has inspected the structures and in his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

Findings 6 and 7 do not apply.



**Action Agenda  
ZONING ADMINISTRATOR  
Regular Meeting**

**10:00 a.m., Wednesday, January 6, 2016  
City Council Chambers  
809 Center Street**

The following is an unofficial representation of the Zoning Administrator's actions.  
Minutes are official upon approval.

**Call to Order** by Zoning Administrator Eric Marlatt

**Oral Communications—None**

**Announcements** - No action shall be taken on these items.

**Public Hearings**

**Old Business - None**

**New Business**

**1. 1307 West Cliff Drive**

**CP15-0157**

**APN 003-284-05**

Coastal and Design Permit to remodel a legal nonconforming single-family residence in the of-r/czo/spo/wcd zone district. (Environmental Determination: Categorical Exemption) (HONJO SHIGEFUMI & AMY, owner/filed: 9/17/2015) RB

This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Coastal Permit and Design Permit and per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**Action:** The Zoning Administrator acknowledged the environmental determination and approved the Coastal Permit and Design Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**2. 705 & 725 Front Street & 118 Cooper**

**CP15-0179**

**APN 005-081-59**

Administrative Use Permit and Design Permit to develop Abbott Square into a community plaza and public market including seven eating and drinking establishments (four restaurants, two food kiosks and one bar) with outdoor seating, low risk alcohol service, and incidental, live, outdoor entertainment on a property located in the CBD zone district. (Environmental Review: Categorical Exemption) (Santa Cruz COUNTY OF, owner/filed: 10/21/2015) SH

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Administrative Use Permit and Design Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".



**Action:** The Zoning Administrator continued the item to the Zoning Administrator meeting of January 20, 2016, per the applicant's request. This item will not be re-advertised or re-noticed.

**3. 409, 411, 411-B S.BRANCIFORTE AVE CP15-0176 APN 010-111-06**

Variance for setbacks for the 411-B S. Branciforte unit and Conditional Driveway Permit to allow the relocation of a driveway serving one of three units resulting in two parking spaces located within the front yard setback of the 409 S. Branciforte unit in the RL Zone District. (Environmental Determination: Categorical Exemption) (BUSE DOREEN TRUSTEE, owner/filed: 10/13/2015) NC

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Variance and Conditional Driveway permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**Action:** The Zoning Administrator acknowledged the environmental determination and approved the Variance and the Conditional Driveway Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A". Revised condition #11.

## Adjournment—10:49am

The next Zoning Administrator meeting will be held on January 20, 2016 at 10:00 a.m. in the City Council Chambers.

Any writing related to an agenda item for the open session of this meeting distributed to the Zoning Administrator less than 72 hours before this meeting is available for inspection at the City Planning Department, 809 Center Street, Room 107 or on the City's website [www.cityofsantacruz.com](http://www.cityofsantacruz.com). These writings will also be available for review at the Zoning Administrator meeting in the public review binder at the rear of the Council Chambers.

Appeals must be received by the Planning Department within ten (10) calendar days following the date of the action from which such appeal is being taken. An appeal must be accompanied by a five hundred fourteen dollar (\$514) filing fee, unless the item involves a Coastal Permit that is appealable to the California Coastal Commission, 725 Front St., Suite 300, Santa Cruz, CA 95060 in which case there is no fee.

The City of Santa Cruz does not discriminate against persons with disabilities. Out of consideration for people with chemical sensitivities, we ask that you attend fragrance free. Upon request, the agenda can be provided in a format to accommodate special needs. Additionally, if you wish to attend this public meeting and will require assistance such as an interpreter for American Sign Language, Spanish, or other special equipment, please call the City Clerk's Department at 420-5030 at least five days in advance so that we can arrange for such special assistance, or email [CityClerk@cityofsantacruz.com](mailto:CityClerk@cityofsantacruz.com). The Cal-Relay system number: 1-800-735-2922.





PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
809 Center Street ~ Room 206 ~ Santa Cruz, CA 95060 ~ (831) 420-5100

## ZONING PERMIT

PROJECT #:CP15-0157

OWNER: HONJO SHIGEFUMI & AMY  
1307 W CLIFF DR  
SANTA CRUZ CA 95060

APPLICANT: HAMILTON SWIFT AND ASSOCIATES  
500 CHESTNUT STREET  
SANTA CRUZ CA 95060

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APN(s)/Address(es):

003-284-05/1307 WEST CLIFF DR

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The following permit(s) was/were approved on 01/06/2016 by the Zoning Administrator and will be effective on 01/19/2016 unless appealed. If the final day for filing an appeal (ten calendar days following the approval date) occurs on a weekend day or holiday, the final filing date shall be extended to the following workday. If no appeal is filed, the effective date shall be the day after the final appeal filing date.

- ☒ Coastal Permit\*  
☒ Design Permit

By: 

Eric Marlatt, Zoning Administrator

This permit is issued to the owner of the property. In executing this permit, applicant/owner agrees to comply with all terms of permit(s), including conditions of approval, if any. Permit must be exercised within 36 months of date of issuance (above) unless otherwise indicated in conditions of approval. See reverse for information regarding appeals and property reassessment.

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\* Coastal Permit - This Coastal Permit is appealable to the California Coastal Commission following appeal to the Planning Commission and City Council. Appeals must be filed within ten (10) working days after final action by City Council. There is no fee. Appeal forms are available in the Regional Office of the Coastal Commission: 725 Front St, Suite 300, Santa Cruz CA 95060.

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CC: County Assessor's Office  
File  
Coastal Commission

In accordance with Chapter 24.04 of the Santa Cruz Municipal Code, any interested person may appeal a final action of a hearing body or staff. Appeal of a decision of the City Planning Director or the Zoning Administrator must be made to the Planning Commission through the Planning Department. Appeals of a decision of the City Planning Commission or Historic Preservation Commission must be made to the City Council through the City Clerk. All appeals must be made in writing and state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be accompanied by the required appeal fee. \*\*Appeals must be received no later than ten (10) calendar days following the action from which the appeal is being taken. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

Whenever any permit is denied or withdrawn, no new application for the same or substantially the same project may be filed for a period of one year from the date of said denial or withdrawal. Where an application has been denied without prejudice, application for the same or substantially the same project may be filed within said period of one year.

In accordance with Section 65863.5 of the Government Code, a copy of this permit has been sent to the County Assessor. It is the Assessor's duty, under Section 402.2 of the Revenue and Taxation Code, to reassess the property to the extent permitted by law. If, after receiving your notice of assessment, your opinion of value differs from the Assessor's valuation, you have the right of protest and appeal. Contact the Assessor's Office immediately to discuss the valuation. If there is still a difference of opinion, you may request a hearing before the Assessment Appeals Board. Application for such hearing must be filed in writing with the Clerk of the County Board of Supervisors, County Courthouse, 701 Ocean St, Santa Cruz CA 95060, between July 2 and August 26 of each tax year.

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT AT

1307 West Cliff Drive – Application No. CP14-0157

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the  
OF-R/CZ-O/SP-O/WCD-O zone district.**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. This permit shall be exercised within three (3) years of the date of final approval or it shall become null and void.
4. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
5. All final working drawings shall be submitted to the Zoning Administrator for review and approval in conjunction with the building permit application. The plans submitted for building permits shall have the same level of articulation, detailing, and dimensionality as shown in the approved plans. All approved exterior finishes and materials shall be clearly notated on the building permit plans.
6. The applicant and contractor who obtains a building permit for the project shall be required to sign the following statement at the bottom of these conditions, which will become conditions of the building permit:

"I understand that the subject permit involves construction of a building (project) with an approved Design Permit. I intend to perform or supervise the performance of the work allowed by this permit in a manner which results in a finished building with the same level of detail, articulation, and dimensionality shown in the plans submitted for building permits. I hereby acknowledge that failure to construct the building as represented in the building permit plans, may result in delay of the inspections process and/or the mandatory reconstruction or alteration of any portion of the building that is not in substantial conformance with the approved plans, prior to continuation of inspections or the building final."

\_\_\_\_\_  
Signature of Building Contractor

\_\_\_\_\_  
Date

CONDITIONS OF APPROVAL  
For 1307 West Cliff Drive – CP14-0157

7. Except as modified by other conditions of approval, the development of the site shall be in substantial accordance with the approved plans prepared by Endres Studio Architecture Engineering (dated 9/4/15), and on file in the Department of Planning and Community Development of the City of Santa Cruz except as modified herein. All aspects of construction must be completed prior to occupancy. Major modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.
8. All requirements of the Building, Fire, Water, and Public Works Departments shall be completed prior to occupancy and continuously maintained thereafter.
9. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
10. All refuse and recycling activities during construction shall be done in accordance with Chapter 6.12 of the Santa Cruz Municipal Code. Be aware that private companies offering refuse or debris box services are not allowed to operate within the City limits, except under certain limited circumstances detailed in Chapter 6.12.160.
11. The final landscape plan shall be in substantial accordance with the approved plans submitted and on file in the Department of Planning and Community Development of the City of Santa Cruz.
12. All landscaping shall be installed prior to final utility release or issuance of occupancy permits.
13. Prior to site grading or any disturbance all trees and/or tree stands indicated for preservation in the approved plans shall be protected through fencing or other approved barricade. Such fencing shall protect vegetation during construction and shall be installed to the satisfaction of the Director of Planning and Community Development.
14. The applicant shall implement all recommendations presented in the *Tree Assessment & Pruning Specification* prepared by Maureen Hamb- Certified Arborist on April 1, 2015.
15. The applicant shall implement all recommendations presented in the *Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House 1307 West Cliff Drive (January 2015)* and the *Supplemental Geotechnical Recommendation for the Driveway Retaining Wall (September 4, 2015)* prepared by Haro, Kasunich and Associates, Inc.

CONDITIONS OF APPROVAL  
For 1307 West Cliff Drive – CP14-0157

16. All new mechanical equipment and appurtenances, including gas and water meters, electrical boxes, roof vents, air conditioners, antennas, etc. visible from the public way and from adjacent properties, shall be screened with material compatible with the materials of the building and shall be subject to the approval of the Zoning Administrator.
17. Final colors shall be approved by the Zoning Administrator prior to application for building permits.





## ZONING ADMINISTRATOR AGENDA REPORT

DATE: December 17, 2015

AGENDA OF: January 6, 2016

ITEM NO: CP15-0157

1307 West Cliff Drive

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**RECOMMENDATION:** That the Zoning Administrator acknowledge the environmental determination and approve the Design and Coastal Permits based on the findings listed below and the Conditions of Approval listed in Exhibit "A".

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### PROJECT DATA

Property Owner: Shigefumi Honjo APN: 003-284-05  
Representative: Hamilton Swift and Associates

Application Type: Coastal and Design Permits to remodel a legal nonconforming single-family residence in the OF-R/CZ-O/SP-O/WCD-O zone district.

Zoning: OF-R (Ocean Front Recreational), CZO (Coastal Zone Overlay), SPO (Shoreline Protection Overlay), and WCD (West Cliff Drive Overlay)

Project Consistency: Legal nonconforming use, consistent as conditioned with the OF-R/CZ-O/SP-O/WCD-O zone district

General Plan: CR (Coastal Recreation)  
Project Consistency: Legal nonconforming use, consistent as conditioned with the General Plan designation

Land Use - existing: Two story, single family dwelling with an attached guest unit  
- proposed: Two story, single family dwelling with an attached guest unit  
- in area: One and two-story residences

Lot Area: 21,257 square feet

Parking:  
Required: Three spaces  
Provided: One covered spaces, two uncovered space

Environmental Review: Categorical Exemption 15301 Class 1(d)

Planning Staff: Ryan Bane, Senior Planner

## **BACKGROUND**

The project site is an irregularly shaped lot on the ocean side of West Cliff Drive near the intersection of West Cliff Drive and Fair Avenue. With the north side of the lot abutting West Cliff Drive, the remaining portions of the parcel are bounded by coastal bluff. The lot is currently developed with a two-story single-family house and detached guest house that were built in 1940. The four-bedroom, two-bath house is fairly original, and it appears minimal maintenance has been done to the structure over the years. The property is zoned OF-R (Ocean Front Recreational District) which does not permit residential uses. Therefore the existing single-family house is considered a legal nonconforming use.

## **PROJECT DESCRIPTION**

The proposal involves the remodel of the existing main house and guest house. Improvements include:

### **Main House**

- New Foundation, including raising the structure by 6" to have proper soil clearance;
- Upgrade seismic system, including new lateral elements to help improve seismic performance. Lateral elements include the vertical system as well as diaphragm transfer in the floors and roof to the vertical system.
- Removal of approximately 200 square feet of storage area along the west and north side of the main house.
- Removal of the wood fireplace and chimney.
- Interior improvements to the first and second floors, including the moving of interior walls to reconfigure the floor plans.
- New electrical, mechanical and plumbing systems to bring the house up to current building code.
- Exterior improvements to include new windows, doors, trim, siding, copper gutters and roofing. Additionally new air and water barriers will be installed under the new siding.
- Extension of the front porch area and removal of dormers facing both the street and the ocean side.
- New deck (1' above grade) with stairs to the back yard area.

### **Detached Cottage**

- New kitchenette, conversion of the closet to a full bathroom, and the addition of a 65 square foot covered porch along the east elevation.
- Removal of the existing bathroom pop-out (45 square feet).
- New French doors, windows, trim, siding, copper gutters and roofing. Additionally new air and water barriers will be installed under the new siding.

## AGENDA REPORT

ZA Meeting of January 6, 2016

SUBJECT: 1307 West Cliff Drive – CP15-0157

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The new exterior improvements will employ two types of siding, including 3-inch horizontal bevel profile siding and 8-inch vertical board and batten siding, both of which will be factory finished with a Japanese torching method called shou sugi ban. This process acts as an additional weather retardant and will slightly darken the wood siding. New windows will have decorative wood shutters, and new cedar shingles with copper flashing are proposed for the roof.

### Landscaping

- Remove existing non-native plants and replant with native coastal bluff meadow planting.
- Retain and repair existing vernacular beach stake fence (2' height max).
- Retain and restore gravel or crushed granite pathways.
- Remove lawn and replant with no-mow grass.
- Three new small canopy fruit trees.
- Relocate existing fire-pit and seating (wood burning only).
- New safety fence along a portion of the bluff edge (4" open mesh, non-reflective metal finish, 3'-6" tall)
- New native flowering perennials.
- Existing Cypress and Eucalyptus trees to be trimmed.

A tree assessment report was prepared by certified arborist Maureen Hamb to analyze two Monterey Cypress trees and one Eucalyptus tree on the property. It was concluded that the trees are generally healthy with minor to moderate structural defects. Pruning to improve the structure and reduce the weight and balance of the canopy is recommended, as well as continued monitoring of the erosion around the surface of the trees. The report was reviewed by City Urban Forester Leslie Keedy who agreed with the assessment.

### Retaining Wall

The installation of a small retaining wall is proposed along the outboard edge of the existing driveway. The driveway is currently being undermined by runoff from surface drainage due to a West Cliff Drive storm drain outlet that has frequently overflowed. In order to maintain the driveway and prevent further erosion, a soil pin wall has been designed and recommended by Haro, Kasunich and Associates Inc. A supplemental geotechnical report has been included as part of the submittal.

### ANALYSIS

#### Coastal Permit

The proposed project is located in within both the Coastal Zone Overlay (CZ-O) and Shoreline Protection Overlay (SP-O) Districts. The project site is located within the appealable area of the Coastal Zone, and does not qualify for a Coastal Permit exemption or exclusion due to Section 24.08.230.1(5)(B)(2) which requires a Coastal Permit for projects "Where the structure is located

## AGENDA REPORT

ZA Meeting of January 6, 2016

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on a beach, wetland, or seaward of the mean high-tide line; where the residence or proposed improvement would encroach within fifty feet of the edge of a coastal bluff". The structure and related improvements are within fifty feet of the edge of the coastal bluff, therefore a Coastal Permit is required. The site will maintain its legal nonconforming status as a residential use in the OF-R (Ocean Front Recreational District), with no expansion of the structure or residential use. As proposed, the project is consistent with applicable policies of the Local Coastal Program, which seeks to minimize the impact of development on coastal resources.

### Design Permit

Section 24.08.410(17) requires approval of a Design Permit for any structures within the West Cliff Drive Overlay. While no new structures are proposed as part of this application, the proposed improvements are significant enough that a Design Permit has been included as part of the approval.

The project involves the remodel of an existing single-family house with no additions or increase in massing or volume. With the structures maintaining their locations with no new additions, most of the West Cliff Overlay regulations are not applicable for this project. The project does propose some new landscaping, and meets the West Cliff Overlay standards by landscaping unpaved portions of the exterior and side yards, removing non-native plants and replanting with native coastal bluff meadow planting. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

### Nonconforming Status

The property is zoned OF-R (Ocean Front Recreational District) which does not permit residential uses. Therefore the existing single-family house is considered a legal nonconforming use. Due to the legal nonconforming status of the single-family use, Section 24.18 of the Zoning Ordinance applies to the parcel. The purpose of this chapter is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of the underlying zoning district. The following sections of the Nonconforming Ordinance are applicable to the subject site and proposed improvements:

- **24.18.20(2) – Any legal nonconforming use may be continued, provided there is no increase in the intensity of such use.**

No additional units are being proposed, nor is there any expansion of the use.

- **24.18.20(3) – Any legal nonconforming building or structure shall not be made more nonconforming.**

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The main house and guest unit are proposed to maintain their current footprints, with some later additions proposed to be removed. Therefore the structures will not be made more nonconforming.

- **24.18.20(6) – Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official.**

As part of the remodel, the applicant is proposing to replace the foundations that are failing as well as new lateral elements to help improve seismic performance. Deputy Building Official Eric Simonson inspected the structures and found that the foundations are failing due to the poor soils conditions that the original 1940s buildings are sitting on, as well as the lack of proper reinforcements in the concrete. He also reviewed the geotechnical investigation prepared by Haro, Kasunich and Associates and agreed with their recommendations. It is his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants.

- **24.18.060 – Any nonconforming use may be maintained and continued, provided there is no expansion in the area or volume occupied or devoted to such nonconforming use, and further provided there is no increase in the intensity of such nonconforming use except as otherwise provided in this title.**

The main house and guest unit are proposed to maintain their current footprints, with some later additions proposed to be removed. Therefore there is no expansion in the area or volume occupied or devoted to the nonconforming residential use, nor is there any increase in the intensity.

- **24.18.080(1) – Normal and routine maintenance or nonstructural alterations of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, rendering the space more usable, or complying with the requirements of law shall be permitted.**

The proposed improvements to the structures qualify as normal and routine maintenance with the exception of the replacement of the foundation and new lateral elements to help improve seismic performance. The Deputy Building Official has inspected the structures and it is his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants.

- **24.18.080(3) – Buildings containing nonconforming residential uses may be altered to improve livability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.**



There is no increase in dwelling units proposed, as the single-family residential use is proposed to remain unchanged. Additionally, the bulk of the building is being reduced as approximately 200 square feet of later additions are being demolished.

In order to maintain the legal nonconforming status of the residential use, the structure must remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are proposed to remain, and that the remodel does not qualify as a demolition. Therefore the nonconforming structure remains intact and can be maintained as a nonconforming residential use.

### **ENVIRONMENTAL REVIEW**

The project is exempt from environmental review under the California Environmental Quality Act (CEQA). The project qualifies for the "Existing Facilities" exemption according to Section 15301 Class 1(d) of the CEQA Guidelines as the project involves "restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety."

### **SUMMARY**

The proposed improvements to the legal nonconforming single-family residence are consistent with City land use policies and zoning regulations and will enhance an aging structure that is currently unsafe due to a failing foundation and outdated seismic system. It is recommended that the Zoning Administrator approve the project based on the Findings below and subject to the attached Conditions of Approval in "Exhibit A."

### **FINDINGS**

#### **Coastal Permit, Section 24.08.250**

##### **1. Maintain views between the sea and the first public roadway parallel to the sea.**

The improvements to the residential structures will not affect coastal views as the location, massing, and volume of the structures will remain unchanged.

##### **2. Protect vegetation, natural habitats and natural resources consistent with the Local Coastal Land Use Plan.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of

native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

**3. Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan.**

The project site is within the West Cliff Drive Overlay zone. The standards include special requirements for calculating height, floor area ratio, setbacks, and landscaping. The project as proposed is consistent with the WCD development standards.

**4. Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.**

This project will not affect public access to the coast therefore, this finding is not applicable.

**5. Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate.**

This project will not affect visitor- serving needs therefore, this finding is not applicable.

**6. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.**

This is a proposal to remodel an existing legal nonconforming single family dwelling; therefore this finding is not applicable.

**Shoreline Protection Overlay District, Section 24.10.2430**

**7. The project protects trees and vegetation and sensitive wildlife habitat.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

**8. The project is consistent with the following criteria for bluff or cliff development:**

- a. The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.**

The project involves the remodel of an existing legal nonconforming single-family house that has been located on the coastal bluff since 1940. The proposed improvements to the structure, including a new foundation and seismic system will assure stability and structural integrity of the home's expected economic life span and will not impact any natural land forms.

- b. The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing a full gutter system to collect and control roof runoff, directing it toward the street storm drain system.

- c. The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.**

The remodel of the existing legal nonconforming single-family house will not alter the existing cliff or bluff top and will not interfere with sand movement.

- d. The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.**

The project proposes the installation of a small retaining wall along the outboard edge of the existing driveway. The driveway is currently being undermined by runoff from surface drainage due to a West Cliff Drive storm drain outlet that has frequently overflowed. In order to maintain the driveway and prevent further erosion, a soil pin wall has been designed and recommended by Haro, Kasunich and Associates Inc. A supplemental geotechnical report has been included as part of the submittal. No sea wall is proposed as part of this application.

- e. The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.**

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The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing a full gutter system to collect and control roof runoff, directing it toward the street storm drain system.

9. **The project provides maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title.**

The applicant will be required to provide erosion control measures with the building permit application materials.

10. **The project maintains public view corridors between the sea and the first public roadway parallel to the sea and maintains natural views of the coastline.**

The improvements to the residential structures will not affect coastal views as the location, massing, and volume of the structures will remain unchanged.

11. **The project protects paleontological resources as prescribed in the Land Use Plan.**

The site is not located within a mapped paleontological sensitive area.

12. **The project is compatible with the established physical scale of the area.**

The project involves a remodel of an existing single-family house with no additions or increase in massing or volume. The 75 year old structure will remain compatible with the established physical scale of the area.

13. **The project is consistent with the design review guidelines of this title and the policies of any applicable area plan.**

The property is located in the West Cliff Drive Overlay District which has specific regulations regarding building height, building envelope, setbacks, floor area ratio (FAR), parking, landscaping, and fencing. The project involves the remodel of an existing single-family house with no additions or increase in massing or volume; therefore with no expansion most of the regulations are not applicable for this project. The project does propose some new landscaping, and meets the West Cliff Overlay standards by landscaping unpaved portions of the exterior and side yards, removing non-native plants and replanting with native coastal bluff meadow planting. Existing fencing is proposed to remain.

14. **The project is consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.**

The project site is within the Coastal Zone Overlay District, the Shoreline Protection Overlay District, and the West Cliff Drive Overlay District as defined in the General Plan/Local Coastal Plan. The project is consistent with the applicable policies in the General Plan/Local Coastal Plan in that the legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use and the structures will not be made more nonconforming. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

Findings 6 and 7 do not apply.

**Design Permit, Section 24.08.430**

15. **The site plan shall be consistent with physical development policies of the General Plan, any required or optional element of the General Plan, any area plan or specific plan or other city policy for physical development. If located in the Coastal Zone, a site plan shall also be consistent with policies of the Local Coastal Program.**

The site plan is consistent with the physical development goals and policies of the 2030 General Plan, which seek to create diverse neighborhoods with well-defined character, improve neighborhood quality and housing, and encourages high-quality design that reinforces the community's unique character. The project is consistent with the applicable policies in the General Plan/Local Coastal Plan, the Coastal Overlay Zone, and the West Cliff Drive Overlay district. The legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use and the structures will not be made more nonconforming. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

16. **The exterior design and appearance of buildings and structures and the design of the site plan shall be compatible with design and appearance of other existing buildings and structures in neighborhoods which have established architectural character worthy of preservation.**



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The legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use and the structures will not be made more nonconforming. Improvements to the structure and landscaping will enhance the visual quality of the site and will be compatible with the diverse architecture along West Cliff Drive.

17. **Design of the site plan shall respect design principles in terms of maintaining a balance of scale, form and proportion, using design components, which are harmonious, materials and colors that blend with elements of the site plan and surrounding areas. Location of structures should take into account maintenance of view; rooftop mechanical equipment shall be incorporated into roof design or screened from adjacent properties. Utility installations such as trash enclosures, storage units, traffic-control devices, transformer vaults and electrical meters shall be accessible and screened.**

The legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use and the structures will not be made more nonconforming. Improvements to the structure and landscaping will enhance the visual quality of the site and will have a compatible scale with other dwellings in the surrounding single-family residential neighborhood. With no expansion, views will remain unchanged. No rooftop equipment is proposed.

18. **Where a site plan abuts, or is in close proximity to, uses other than that proposed, the plan should take into account its effect on other land uses. Where a nonresidential use abuts or is in close proximity to a residential use, the effect of the site plan should maintain the residential quality of adjacent or nearby areas.**

The existing and proposed uses are residential, adjacent to residential uses.

19. **The orientation and location of buildings, structures, open spaces and other features of the site plan shall be such as to maintain natural resources including significant trees and shrubs to the extent feasible, maintain a compatible relationship to and preserve solar access of adjacent properties, and minimize alteration of natural land forms, building profiles, location, and orientation must relate to natural land forms.**

The legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use and the structures will not be made more nonconforming. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees. The site stands alone on the ocean side of West Cliff Drive; therefore there will be no

solar access impacts on adjacent properties. The coastal bluff will not be altered as the structures are proposed to remain in their current location.

20. **The site plan shall be situated and designed to protect views along the ocean and of scenic coastal areas. Where appropriate and feasible, the site plan shall restore and enhance visual quality of visually degraded areas.**

The improvements to the residential structures will not affect coastal views as the location, massing, and volume of the structures will remain unchanged. The proposed improvements to the structures and landscaping will enhance the visual quality of the site.

21. **The site plan shall minimize the effect of traffic conditions on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances, exit drives and walkways; through the adequate provision of off-street parking and loading facilities; through an adequate circulation pattern within the boundaries of the development; and through the surfacing and lighting of off-street parking facilities.**

The proposed remodel reduces the bedroom count from four to two bedrooms, thereby reducing the required parking from three to two spaces. On site circulation will remain unchanged with the exception of the addition of a garage that will be accessed from the existing courtyard between the main house and the guest house. The circular driveway will remain.

22. **The site plan shall encourage alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians and bicyclists, including covered parking for bicycles and motorcycles where appropriate. Public transit stops and facilities shall be accommodated as appropriate, and other incentive provisions considered which encourage non-auto travel.**

This finding is not applicable.

23. **The site shall provide open space and landscaping which complement buildings and structures. Open space should be useful to residents, employees, or other visitors to the site. Landscaping shall be used to separate and/or screen service and storage areas, separate and/or screen parking areas from other areas, break up expanses of paved area, and define open space for usability and privacy.**

The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, enhancing the property visually from the public view. The ocean side of the house as well as the courtyard between the main house and guest house provide private usable open space for residents. Existing hedges

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ZA Meeting of January 6, 2016

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and fencing screen parking and storage areas and define open space for usability and privacy.

24. **The site plan shall reasonably protect against external and internal noise, vibration and other factors, which may tend to make the environment less desirable. The site plan should respect the need for privacy of adjacent residents.**

The proposed house will require issuance of a building permit. All of the applicable regulations of the Uniform Building Code concerning external and internal noise, vibration and other factors, which may tend to make the environment less desirable shall be incorporated into the approved plans.

25. **Signs shall complement the site plan and avoid dominating the site and/or existing buildings on the site or overwhelming the buildings or structures to which they are attached. Multiple signs on a given site should be of a consistent theme.**

This finding is not applicable.

26. **Building and structures shall be so designed and oriented to make use of natural elements such as solar radiation, wind, and landscaping for heating, cooling and ventilation.**

The design of the home includes a southern orientation, with outdoor yard areas and a small deck. The design includes operable doors and windows that will allow ventilation and cooling.

27. **The site plan shall incorporate water-conservation features where possible, including in the design of types of landscaping and in the design of water-using fixtures. In addition, water restricting showerheads and faucets shall be used, as well as water-saving toilets utilizing less than three gallons per flush.**

The Water Conservation Department will review and approve the building/landscape plans to ensure they incorporate water conservation features.

28. **In all projects in Industrial (I) Zones, building design shall include measures for reusing heat generated by machinery, computers and artificial lighting.**

This finding is not applicable.

29. **In all projects in Industrial (I) Zones, all buildings and structures shall be so designed and oriented to make use of natural lighting wherever possible.**

This finding is not applicable.


30. Heating systems for hot tubs and swimming pools shall be solar when possible but in all cases energy efficient.

This finding is not applicable.

31. Enhance the West Cliff Drive streetscape with appropriate building mass, modulation, articulation, coloring and landscaping that is compatible with and would not diminish the visual prominence of the public open space.

The project involves the remodel of an existing single-family house with no additions or increase in massing or volume; therefore with no expansion most of the West Cliff Overlay regulations are not applicable for this project. The project does propose some new landscaping, and meets the West Cliff Overlay standards by landscaping unpaved portions of the exterior and side yards, removing non-native plants and replanting with native coastal bluff meadow planting. There is no expansion of use and the structures will not be made more nonconforming. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

Submitted by:



Ryan Bane  
Senior Planner

Attachments:

Exhibit A – Recommended Conditions of Approval

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT AT

1307 West Cliff Drive – Application No. CP14-0157

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the OF-R/CZ-O/SP-O/WCD-O zone district.**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. This permit shall be exercised within three (3) years of the date of final approval or it shall become null and void.
4. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
5. All final working drawings shall be submitted to the Zoning Administrator for review and approval in conjunction with the building permit application. The plans submitted for building permits shall have the same level of articulation, detailing, and dimensionality as shown in the approved plans. All approved exterior finishes and materials shall be clearly notated on the building permit plans.
6. The applicant and contractor who obtains a building permit for the project shall be required to sign the following statement at the bottom of these conditions, which will become conditions of the building permit:

"I understand that the subject permit involves construction of a building (project) with an approved Design Permit. I intend to perform or supervise the performance of the work allowed by this permit in a manner which results in a finished building with the same level of detail, articulation, and dimensionality shown in the plans submitted for building permits. I hereby acknowledge that failure to construct the building as represented in the building permit plans, may result in delay of the inspections process and/or the mandatory reconstruction or alteration of any portion of the building that is not in substantial conformance with the approved plans, prior to continuation of inspections or the building final."

\_\_\_\_\_  
Signature of Building Contractor

\_\_\_\_\_  
Date

CONDITIONS OF APPROVAL  
For 1307 West Cliff Drive – CP14-0157

7. Except as modified by other conditions of approval, the development of the site shall be in substantial accordance with the approved plans prepared by Endres Studio Architecture Engineering (dated 9/4/15), and on file in the Department of Planning and Community Development of the City of Santa Cruz except as modified herein. All aspects of construction must be completed prior to occupancy. Major modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.
8. All requirements of the Building, Fire, Water, and Public Works Departments shall be completed prior to occupancy and continuously maintained thereafter.
9. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
10. All refuse and recycling activities during construction shall be done in accordance with Chapter 6.12 of the Santa Cruz Municipal Code. Be aware that private companies offering refuse or debris box services are not allowed to operate within the City limits, except under certain limited circumstances detailed in Chapter 6.12.160.
11. The final landscape plan shall be in substantial accordance with the approved plans submitted and on file in the Department of Planning and Community Development of the City of Santa Cruz.
12. All landscaping shall be installed prior to final utility release or issuance of occupancy permits.
13. Prior to site grading or any disturbance all trees and/or tree stands indicated for preservation in the approved plans shall be protected through fencing or other approved barricade. Such fencing shall protect vegetation during construction and shall be installed to the satisfaction of the Director of Planning and Community Development.
14. The applicant shall implement all recommendations presented in the *Tree Assessment & Pruning Specification* prepared by *Maureen Hamb- Certified Arborist* on April 1, 2015.
15. The applicant shall implement all recommendations presented in the *Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House 1307 West Cliff Drive (January 2015)* and the *Supplemental Geotechnical Recommendation for the Driveway Retaining Wall (September 4, 2015)* prepared by *Haro, Kasunich and Associates, Inc.*



CONDITIONS OF APPROVAL  
For 1307 West Cliff Drive – CP14-0157

16. All new mechanical equipment and appurtenances, including gas and water meters, electrical boxes, roof vents, air conditioners, antennas, etc. visible from the public way and from adjacent properties, shall be screened with material compatible with the materials of the building and shall be subject to the approval of the Zoning Administrator.
17. Final colors shall be approved by the Zoning Administrator prior to application for building permits.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060-4508  
VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: Jack Zajac

Mailing Address: 1316 West Cliff Drive

City: Santa Cruz

Zip Code: 95060

Phone: 831 426-9157

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Santa Cruz

2. Brief description of development being appealed:

This is an appeal of the City of Santa Cruz, Zoning Administrator's approval of a remodel/redevelopment (down to two walls of studs with new foundation) of a legal non-conforming Cotswald cottage built in 1937 in the Ocean Front Recreational, Coastal Zone Overlay, Shoreline Protection Overlay and West Cliff Drive Overlay zone district.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1307 West Cliff Drive

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions  
☐ Approval with special conditions:  
☐ Denial

**RECEIVED****FEB 02 2016****CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA**

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A-3-STC-16-0016

DATE FILED:

2/2/16

DISTRICT:

Central Coast

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☒ Planning Director/Zoning Administrator
- ☐ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: January 6, 2016

7. Local government's file number (if any): \_\_\_\_\_

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Shigefumi and Amy Honjo c/- Hamilton Swift & Associates

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) John Bergwall and Gillian Greensite 130 Liberty St. Santa Cruz, CA 95060

(2) Kate Hawley and Paul Whitworth 519 Meder St. Santa Cruz 95060

(3) Sophia Palmer and Kevin Flannery 225 Getchell St. Santa Cruz 95060

(4) Ruth Hanson 555 Meder St. Santa Cruz 95060; Celest Barro 1016 Seabright, Santa Cruz 95062



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Reasons for the appeal of the project at 1307 West Cliff Drive: a legal non-conforming structure subject to significant limitations in the way of alterations.

This Cotswald cottage, built in 1937 by local cellist Bessie Boyd Miller with its detached music room is an iconic Santa Cruz landmark. Known as the "Tide Cliff Studio" it gained later prominence in the Clint Eastward film "Sudden Impact". Its unique location as the only residential structure on the ocean side of West Cliff Drive, its history and its Cotswald architecture set it apart from all other West Cliff Drive structures. Its future status is of wide concern.

The application is inconsistent with the city's non-conforming use/structure ordinance which allows for "normal and routine maintenance or non-structural alterations...for the purpose of preserving the existing condition, retarding or eliminating wear and tear or physical depreciation." LCP Section 24.18.080. The plan to remove everything except the studs of two walls; rebuild a new house; remove the current foundation and build a new 6 inch higher foundation and a reinforced retaining wall for the driveway are not consistent with the ordinance .

The applicants applied for and were issued a permit for exploratory demolition on 9/21/2015. This suggests that the intent was to demolish the structure. Real Estate agents' photos show a superb interior with high gloss hardwood floors, pristine white interior walls, ceilings and a remodeled kitchen. The detached cottage is similarly well-appointed. There is no mention of any structural or maintenance problems with the sale of this cottage.

In the Agenda Report of 1/6/2016, the city acknowledges that the approved new foundation and new lateral elements fall outside of the permitted alterations but can be supported for inclusion since deputy building official Eric Simonson said such alterations are needed because "the foundations are failing due to poor soils condition." This was communicated to the Zoning Administrator verbally and no site specific, detailed inspection report was generated by the city as documentation. Prior to this date, the applicant hired Haro, Kasunich and Associates Inc. in January to prepare a Geotechnical Investigation for the cottage and guest house as remodeled. Haro et al. recommend "all new foundation loads be supported by new foundation elements." It is clear that load requirements for new structures rather than the existing structures were the intent of the geotechnical evaluation. Haro et al. did not assess the existing foundation due to "the difficulty involved" according to their report. Neither did they document any soils problems associated with the current foundation.

The project is inconsistent with the "West Cliff Drive Overlay District: Part 42: 10. Nonconforming structures" which requires a reconstruction permit if a proposed reconstruction varies in any way in



exterior design from the previous building being repaired or replaced. No such permit was applied for despite the fact that the proposed new design varies from the current design. The new design replaces the dormer windows with skylights. The south facing wall loses the fireplace and that wall will be replaced with glass. New decks are approved for the main and detached cottage.

Under the LCP, SP-O, CZ-O and WCD Overlay, the city approved the new structure by claiming that it will "enhance the visual quality of the site from the public viewshed"; that it will use "materials and colors that will blend with elements of the surrounding areas". The current Cotswald cottage with its soft blue palette blends harmoniously with the ocean and sky as viewed from West Cliff Drive. It catches and reflects the morning light. The new structure will employ a dark brown, burnt application for the siding which does not blend with sea and sky, pale foggy mornings nor reflect the bright morning sun. It will stand out like a hole in the sky. It could blend with a mountain "element" but not with the "elements" of the central California coast. The south-west exposure of the house is proposed to be all glass, a design choice to enhance the visual quality for the owners but not for the public. Given the curve of the shoreline, this glass exposure will be visible from the west along the path as well as from the ocean.

Under the LCP, the city claims there will be no erosion problems with the redevelopment. This appeal questions that conclusion. Removing the current foundation with jackhammers; digging a new foundation; boring ten foot deep pilings for a new retaining wall for the driveway; adding new decks, removing 4 inches of organic material (Haro et al) might well have a significant erosion and geological stability impact on this relatively tiny outcrop along our coast. There are 3 heritage trees on this property. While none is slated for removal, such disturbance of soil and intrusion into this long-undisturbed soil and rocky platform may well have negative impacts on trees, soil and rocks.

In conclusion, this appeal is filed for all the people whose lives are enriched by this iconic home on the ocean side of the CA coast in Santa Cruz. Such spots are rare and will become more so. This is a good thing because it means the coastal view eventually returns to the people. While we love this historic cottage, we understand that beyond maintenance it is not intended to be strengthened for longevity. The redevelopment project at 1307 West Cliff Drive, besides removing a beloved Santa Cruz landmark, is designed and engineered for longevity. This is not consistent with the LCP and the above-cited ordinances.

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

Jack Zujewski  
Signature of Appellant(s) or Authorized Agent

Date: Feb. 12 2016

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby  
authorize

\_\_\_\_\_

to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

APPEAL FILED TUESDAY FEB 2<sup>ND</sup>. 2016 for 1307 West Cliff Drive, Santa Cruz.

Addendum to Appeal: Submitted February 3<sup>rd</sup>. 2016

Further issues of concern:

1. Addressing the issue of erosion under Coastal Permit Section 24.08.250 and under Findings, the city states under c) "The remodel of the existing legal nonconforming single-family house will not alter the existing cliff or bluff top and will not interfere with sand movement." Under d) the city states that a retaining wall is needed since **"the driveway is currently being undermined by run off from surface drainage due to a West Cliff Drive storm drain outlet that has frequently overflowed."** Under e) the city states that the project will not contribute towards more erosion and that the project will be "implementing a **full gutter system to collect and control roof runoff, directing it toward the street storm drain system.**" More runoff to an existing overflowing street storm drain? This contradiction needs clarifying.
2. There is a public access path to the beach and coast very close to the property line. This was omitted from the city's Agenda Report and approval of the project. It is a narrow and steep path. Analysis and discussion of any potential impact on this fragile public path from the drilling of pilings for a retaining wall; the disruption from hammering out the old foundation plus the impact of increased water flow from the new guttering system should have been undertaken. If the path is washed out public access will end. It should be noted that in one of the real estate listings for the sale of this property the beach below was stated to be a private beach. It well may become just that if this project results in making the public access trail impassable.
3. The date of the Geotechnical Report from Haro, Kasunich et al. was January, 2015. The year was omitted in the appeal letter.
4. Photos include: the existing Cotswald cottage with distinctive dormers and thatchite roof and the public access path; one of the downstairs rooms taken from the real-estate listing page; one of the existing kitchen and one of an existing upstairs bedroom. Thes show the quality of the interiors.



















geographic region of the state following the zoning administrator's request.

(Ord. 95-02 § 4, 1995: Ord. 94-53 § 2, 1994: Ord. 94-33 § 14, 1994: Ord. 89-39 § 1, 1989: Ord. 85-05 § 1 (part), 1985).

#### **24.08.230.3 NOTICE OF EXCLUSION.**

Notices of exclusion shall be issued on forms prepared for that purpose by the department of planning and community development and shall indicate the developer's name, street address, if any, and assessor's parcel number(s) of the project site, a brief description of the development, and the date(s) of application for any other permit(s). A copy of the notice of exclusion shall be provided to the Coastal Commission and to any person who has requested such notice within five working days of issuance. The notice of exclusion may be issued at the time of project application but shall not become effective until all other approvals and permits required for the project are obtained. A copy of all terms and conditions imposed by the city shall be provided to the Coastal Commission.  
(Ord. 94-53 § 3, 1994: Ord. 85-05 § 1 (part), 1985).

#### **24.08.230.4 CHALLENGES TO DETERMINATION OF COASTAL PERMIT REQUIREMENT, EXCLUSION OR APPLICABLE PROCESS.**

In the case of disputes over Santa Cruz City's determination of coastal permit requirement, exclusion or applicable hearing and appeals procedures, the planning director shall request an opinion of the Executive Director of the Coastal Commission. Local acceptance for filing and/or processing of the permit application shall cease until the department of planning and community development receives the determination of appropriate process from the Executive Director of the Coastal Commission or the Coastal Commission.

(Ord. 94-53 § 4, 1994: Ord. 85-05 § 1 (part), 1985).

#### **24.08.230.5 EXCEPTION.**

Nothing in this part shall prevent demolition or the strengthening or restoring to a safe condition of any building or structure declared unsafe by the building official or fire marshal.  
(Ord. 85-05 § 1 (part), 1985).

#### **24.08.240 COASTAL ACCESS.**

Access easements may be required to create and/or maintain existing public access to the coastline or in accordance with Local Coastal Plan policy.  
(Ord. 85-05 § 1 (part), 1985).

#### **24.08.250 FINDINGS REQUIRED.**

The hearing body must find that the development is consistent with the General Plan, the Local Coastal Land Use Plan and the Local Coastal Implementation Program and will:

1. Maintain views between the sea and the first public roadway parallel to the sea;
  2. Protect vegetation, natural habitats and natural resources consistent with the Local Coastal Land Use Plan;
  3. Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan;
  4. Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan;
  5. Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate;
  6. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.
- (Ord. 85-05 § 1 (part), 1985).

#### **24.08.260 NOTICE OF FINAL ACTION.**

Within seven calendar days of the final local action on a coastal permit, the city shall



ciation provided that: (1) The medical marijuana product is used solely by a bona-fide medical marijuana provider association for distribution to its member patients at a legally authorized dispensary operation within the city; (2) security measures satisfactory to the Santa Cruz Police Department are met; (3) off-street freight loading and parking requirements of Section 24.12.240(q) are met; and (4) no marijuana product is consumed on-site. (Ord. 2000-12 § 5, 2000: Ord. 88-60 § 29, 1988; Ord. 88-26 § 15, 1988: Ord. 85-05 § 1 (part), 1985).

#### 24.10.1840 USE DETERMINATION.

Any other use or service establishment determined by the zoning administrator to be of the same general character as the foregoing principal permitted uses, and which will not impair the present or potential use of adjacent properties, may be permitted. A use permit shall be required and processed pursuant to Part 1, Chapter 24.08, Use Permits, of this title.

(Ord. 85-05 § 1 (part), 1985).

#### 24.10.1850 DISTRICT REGULATIONS.

##### 1. General.

Provision	Classification or Type of Use
a. Height of Buildings -Maximum	
• Principal (stories & feet)	3 & 50
• Accessory (stories & feet)	2 & 25
b. Minimum lot area (net) (acres)	20
c. Lot width (feet)	500
d. Front yard (feet)	50
e. Rear yard (feet)	50
f. One side yard (feet)	20
g. Both side yards -total (feet)	50
h. Distance between buildings on same lot (feet)	20

2. Other Requirements. Other regulations which may be applicable to site design in this zone are set forth in General Site Design Standards, Part 2, Chapter 24.12. (Ord. 85-05 § 1 (part), 1985).

### Part 20: OF-R OCEAN FRONT (RECREATIONAL) DISTRICT

#### 24.10.1900 PURPOSE.

The purpose and intent of the Ocean Front (Recreational) District is to ensure the protection of coastal resources and views; to provide public access and maintenance of public use; to assure that coastal development is consistent with the Coastal Land Use Plan and General Plan; and to promote the safe occupancy and the reasonable use of lands subject to continuous erosion, such as coastal cliffs and beaches. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan. (Ord. 94-33 § 48, 1994: Ord. 85-05 § 1 (part), 1985).

#### 24.10.1910 PRINCIPAL PERMITTED USES.

1. Beach and surf access ways, public or private; public beach-recreation activities; but not including the use of any building or structure, other than stairways and handrails;
2. Outdoor classes, public or private; for scientific research, art, and other subjects;
3. Parking areas or lots, public or private; but not including the use of any building or structure;
4. Picnic grounds and barbecue facilities, public or private, including tables, benches, and fire pits; but not including any other structure or building;
5. Public fishing facilities;
6. Safety structures, including, but not limited to, warning signs, barricades, retaining walls, erosion control facilities, lifeguard towers built by, or under the direction of, or with special approval of the city. (Ord. 85-05 § 1 (part), 1985).

**24.10.1920 USE PERMIT  
REQUIREMENT.**

1. The following uses are subject to approval of an administrative use permit and a design permit:

- a. Beach, surfing and fishing equipment;
- b. Fish market;
- c. Identification signs, appurtenant to uses permitted on the premises;
- d. Navigation aids and devices not involving the erection of a structure;
- e. Walls or fences, not to exceed three and one-half feet in height.

2. The following uses are subject to approval of a special use permit:

- a. Navigation aids and devices involving the erection of a structure;
- b. Public restroom facilities;
- c. Temporary structures.

(Ord. 85-05 § 1 (part), 1985).

**24.10.1930 USE DETERMINATION.**

Any other use or service establishment determined by the zoning administrator to be of the same general character as the foregoing principal permitted uses, and which will not impair the present or potential use of adjacent properties, may be permitted. A use permit shall be required and processed pursuant to Part 1, Chapter 24.08, Use Permits, of this title.

(Ord. 85-05 § 1 (part), 1985).

**24.10.1940 DISTRICT REGULATIONS.**

1. General. With the exception of navigational aids and devices, all buildings shall have a maximum height of one story or ten feet. Yard distances shall be established as part of use permit approval.

(Ord. 85-05 § 1 (part), 1985).

**Part 21: F-P FLOODPLAIN DISTRICT**

**24.10.2000 PURPOSE.**

The purpose and intent of the Floodplain District is to protect the public health, safety,

and welfare through regulations of uses in areas which are unprotected from flooding or are required to carry the flood flows of a stream. New construction in the Floodplain District is regulated so that it is protected against damage and located to avoid causing excessive increases in flood heights or velocities. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan.

(Ord. 94-33 § 49, 1994; Ord. 85-05 § 1 (part), 1985).

**24.10.2010 PRINCIPAL PERMITTED  
USES.**

1. Agriculture;
2. Crop and tree farming;
3. Nurseries.

(Ord. 85-05 § 1 (part), 1985).

**24.10.2020 ACCESSORY USES.**

Garages, barns, and other structures customarily appurtenant to a permitted use.

(Ord. 85-05 § 1 (part), 1985).

**24.10.2030 USE PERMIT  
REQUIREMENT.**

1. The following uses are subject to approval of an administrative use permit and a design permit:

- a. Ranch and farm dwellings incidental to a principal agricultural use.

2. The following uses are subject to approval of a special use permit and a design permit:

- a. Recreational facilities, bridges, roads, utility transmission lines;

- b. Riding stables for the keeping of horses on sites at least five acres in size.

(Ord. 85-05 § 1 (part), 1985).

**24.10.2040 USE DETERMINATION.**

Any other use or service establishment determined by the zoning administrator to be of the same general character as the foregoing principal permitted uses, and which will not impair the present or potential use of adjacent

## Part 25: SP-O SHORELINE PROTECTION OVERLAY DISTRICT

### 24.10.2400 PURPOSE.

The purpose of the Shoreline Protection Overlay District is to preserve and protect the coastal and environmental resources in the city of Santa Cruz. It is furthermore intended that the Shoreline Protection Overlay District accomplish the following: minimize cut, fill, earthmoving, riprap placement, grading operations, and other such man-made intrusions in coastal areas; to control erosion; to protect development from geological or other coastal related hazards; to protect public views; to protect and enhance shoreline access for the public; to protect paleontological resources; to generally implement the policies of the Local Coastal Land Use Plan. This district lies generally between the sea and the first public road paralleling the sea, or within three hundred (300) feet of the mean high tide line of the sea, whichever is the greater distance. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan. (Ord. 94-33 § 53, 1994; Ord. 85-05 § 1 (part), 1985).

### 24.10.2410 GENERAL PROVISIONS.

Any proposed exterior construction or remodeling resulting in increased building height, earthmoving, riprap or shoreline alteration, or land alteration activity, or other exterior coastal development activity shall be subject to a coastal permit. Coastal permit exemptions and categorical exclusions may be set forth in resolution by the city council which reflects only those developments identified by Coastal Act, Section 30610 and applicable Commission regulations; and which will go into effect after approval by the Coastal Commission. (Ord. 85-05 § 1 (part), 1985).

### 24.10.2420 HEARING BODY REVIEW.

Prior to issuing a coastal permit in the Shoreline Protection Overlay District, the hearing body must find that the coastal development or other activity is consistent with the purposes of this part, the General Plan and the Local Coastal Land Use Plan. If the coastal development involves other permits, the appropriate hearing body shall consider all permits concurrently. (Ord. 85-05 § 1 (part), 1985).

### 24.10.2430 REVIEW CRITERIA.

Before approving a coastal permit in the Shoreline Protection Overlay District, the hearing body must find that the proposed development will:

1. Protect trees and vegetation and sensitive wildlife habitat;
2. Be consistent with the following criteria for bluff or cliff development:
  - a. The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.
  - b. The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.
  - c. The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.
  - d. The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.
  - e. The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.
3. Provide maximum erosion protection, using accepted engineering practices and methods and specifications set forth in this title;

4. Maintain public view corridors between the sea and the first public roadway parallel to the sea and maintain natural views of the coastline;
  5. Protect paleontological resources as prescribed in the Land Use Plan;
  6. Protect and enhance free public access to or along the beach, and sign such access when necessary;
  7. Include mitigation measures prescribed in any applicable environmental document;
  8. Be compatible with the established physical scale of the area;
  9. Be consistent with the design review guidelines of this title and the policies of any applicable area plan;
  10. Be consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.
- (Ord. 85-05 § 1 (part), 1985).

#### **24.10.2440 APPEALS.**

Coastal development applications within the Shoreline Protection Overlay District may be appealed to the State Coastal Commission in accordance with the coastal appeal procedures established in Section 24.04.186 in this title.

(Ord. 85-05 § 1 (part), 1985).

### **Part 26: CZ-O COASTAL ZONE OVERLAY DISTRICT**

#### **24.10.2500 PURPOSE.**

The Coastal Zone District is an Overlay Zone, the boundaries of which are determined by the California Coastal Act of 1976. The purpose of the Coastal Zone is to provide a means of carrying out the policies of the Coastal Act and the city's Local Coastal Land Use Plan. Within the Coastal Zone is an area which requires further, special consideration. The SP-O Shoreline Protection Overlay District is a subdistrict of the Coastal Zone Overlay, immediately adjacent to the ocean where certain Coastal Act policies are particularly significant and require special review. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan.

(Ord. 94-33 § 54, 1994; Ord. 85-05 § 1 (part), 1985).

#### **24.10.2510 GENERAL.**

A coastal permit shall be required of all development in the Coastal Zone District in addition to other permits required by the Zoning Ordinance or Municipal Code, except as herein excluded in exception provisions, Section 24.10.2520. The regulations of the Coastal Zone Overlay and Shoreline Protection Overlay apply in addition to underlying zones and their regulations.

(Ord. 85-05 § 1 (part), 1985).

#### **24.10.2520 EXEMPTIONS.**

Because not all development in the Coastal Zone has bearing on the purpose and goals of the Coastal Act, certain coastal development types and areas may be exempted from the requirements of a coastal permit. These exemptions and categorical and/or geographical exclusions shall be those set forth by the city council, and will go into effect after approval by the Coastal Commission.

(Ord. 85-05 § 1 (part), 1985).

### **Part 27: MIXED USE OVERLAY DISTRICT**

#### **24.10.2600 PURPOSE.**

The purpose of the Mixed Use Overlay District is to promote the General Plan policy for mixed use and live work development opportunities within the city, by establishing an overlay zone that may be applied to multifamily residential districts that are located on arterial streets or in areas appropriate for mixed use developments.

(Ord. 96-07 § 1 (part), 1996).

all sites abutting a Neighborhood Conservation Overlay District.

In addition to the regulations of the underlying zoning districts, all development, redevelopment and building expansions on sites abutting Neighborhood Conservation Overlay Districts shall comply with the following:

1. Siting: All development shall be designed in a manner that is compatible, to the extent possible, with the existing residential structures in the abutting Neighborhood Conservation Overlay District.

2. Design: All development shall be subject to a design permit and must be in compliance with adopted design guidelines.

3. Height: While the regulations of the underlying zoning district will control height, all development, redevelopment and building expansions on sites abutting the Neighborhood Conservation District and within 30 feet of existing adjacent Conservation District residential structures, shall transition in height and bulk to create a visually compatible relationship with existing structures. Distinctive architectural features may be allowed additional height if permitted by the underlying district, and if compatible with the neighboring district.

4. Parking: All parking must be screened from view from the first floor of existing residential structures in the Conservation District. This screening may be accomplished by walls, trellises, fencing, and/or landscaping. All development must submit a parking/ landscaping plan.

5. All lighting must be designed so that the light source is not visible from the adjacent residential properties nor are the light rays directed or reflected into or on adjacent residential properties.  
(Ord. 2000-18 § 3 (part), 2000).

#### ✓ 24.10.4065 CERTIFICATE OF OCCUPANCY REQUIRED.

In order to ensure safe and sanitary housing and rehabilitation of structures within the

Neighborhood Conservation Overlay District, a valid Certificate of Occupancy shall be required for each transfer of the property within the District. Certificates will not be issued for properties with a recorded Notice of Violation. Certificates will be issued when units comply with applicable codes.  
(Ord. 2000-18 § 3 (part), 2000).

#### ✓ Part 42: WEST CLIFF DRIVE OVERLAY DISTRICT\*

\* Editor's Note: As adopted by Section 6 of Ordinance 2000-27, this part was designated as Part 32 of Chapter 24.10, and the sections numbered as § 24.10.3200, *et seq.* At the direction of the city clerk, it was editorially renumbered to be Part 42 (§ 24.10.4200 *et seq.*) to avoid conflict with previously designated section numbers.

#### 24.10.4200 PURPOSE.

The purpose of the West Cliff Drive Overlay District is to promote quality residential development on and adjacent to West Cliff Drive that positively enhances the public space or realm along West Cliff Drive. The West Cliff Drive Overlay District will preserve, protect and enhance West Cliff Drive as an important social and environmental city and community space; reinforce the residential neighborhood character of the north side of West Cliff Drive; preserve the public view toward the ocean from streets which intersect with West Cliff Drive; and enhance the streetscape by requiring landscaping and modulation of building forms on buildings facing West Cliff Drive. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan. Please also see Part 25, Sections 24.10.2400 et al for properties lying within the Shoreline Protection Overlay District.

(Ord. 2000-27 § 6 (part), 2000).

#### ✓ 24.10.4210 APPLICABILITY.

The West Cliff Drive Overlay District regulations shall apply to the areas so



designated on the official zoning map of the city (attached hereto) and shall be combined with the underlying zone for such area. This district generally includes all properties with frontage along West Cliff Drive from Bay Street to Swanton Road and properties on intersecting streets lying within 100 feet of the northerly West Cliff Drive right-of way line. (Ord. 2000-27 § 6 (part), 2000).

#### ✓24.10.4220 PERMIT REQUIREMENTS.

All principal permitted and use permit required uses shall be those of the underlying zone.

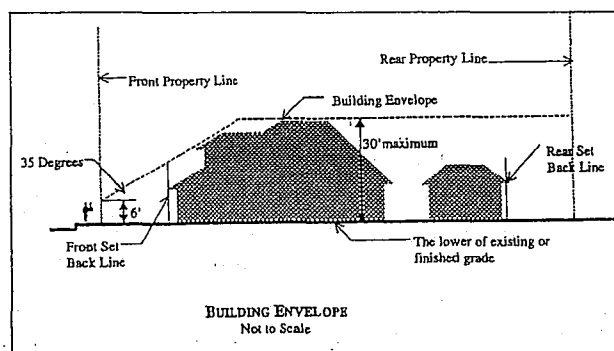
(Ord. 2000-27 § 6 (part), 2000).

#### ✓24.10.4230 DISTRICT REGULATIONS.

1. Development standards shall be those of the underlying zone, except as modified by this section.

2. Building Height. The maximum permitted height for the principal building shall be two stories and 30 feet. The maximum height for an accessory structure shall be one story and 15 feet. The height shall be measured from the top of the structure to the existing or created finished grade, whichever is lower.

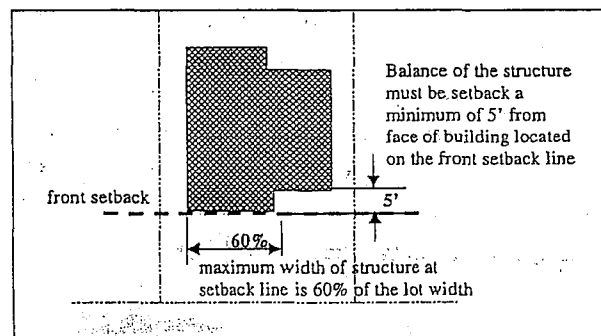
3. Building Envelope. In addition to meeting the building height requirements, no portion of the principal or accessory buildings, with the exception of chimneys not more than six square feet in horizontal dimension, shall encroach in a building envelope plane defined by a line beginning at a point six feet above the lowest point along the front property line and extending over the property at an angle of 35 degrees from the horizontal plane. Architectural elements such as bell towers, spires, turrets, widow walks, cupolas, flag poles, etc. may extend 10 feet above the height limitation, subject to design permit review. (See diagram.)



#### 4. Building Setbacks.

##### a. Front Yard Setback.

(1) 20 foot minimum front yard setback with no more than 60 percent of the width of the lot at the setback line occupied by the building. The remaining portions of the building must be setback a minimum of five feet from the front setback line. (See diagram.)



(2) If a garage is provided within the front portion of the property, the face of the garage shall be setback a minimum of ten feet behind the closest front facade of the residential building toward the street.

##### b. Side Yard Setbacks.

(1) Lots 100 feet or less in width:

(i) The combined width of the first floor side setbacks shall be a minimum of 20 percent of the lot width. The minimum interior side yard setback shall be five feet and minimum exterior side yard shall be eight feet;

(ii) The second floor and above, the combined width of the sideyards shall be a minimum of 30 percent of the lot width. The minimum interior side yard setback at seven

and a half (7.5) feet and minimum exterior side yard shall be 10 feet.

(iii) The setbacks for accessory buildings shall be the same as the principal building.

(2) Lots with more than 100 feet width:

(i) The combined width of the first floor side setbacks shall be a minimum of 30 percent of the lot width. The minimum interior side yard setback shall be ten feet and exterior side yard shall be 20 feet;

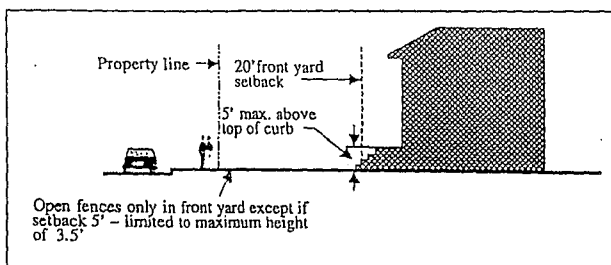
(ii) The second floor and above, the combined width of the side yards shall be a minimum of 35 percent of the lot width. The minimum interior side yard setback at 15 feet and the minimum exterior side yard shall be 25 feet.

(iii) The setbacks for accessory buildings shall be the same as the principal building.

c. Rear Yard Setbacks.

(1) 20 feet minimum rear setback for the principal building.

5. Height of First Floor or Grade. The height of the first floor of any structure shall not be greater than five feet above the average elevation of the top of the curb parallel to the front yard property line. (See diagram.)



6. Floor Area Ratio.

a. The gross floor area ratio for lots 12,500 square feet and less located in the West Cliff Drive Overlay District shall be as follows:

$$.50 - (A \times .02)/1000 = B$$

A is the amount of square footage over 5,000 square feet

B is the gross floor area ratio

b. The gross floor area ratio for lots greater than 12,500 square feet shall be FAR .35.

c. Garages located in the rear 50 percent of the lot shall be granted floor area ratio credit up to 500 square feet.

7. Off-Street Parking.

a. Not more than 25 percent of the lot width can be devoted to driveway access within the front yard setback and in no case may the driveway access be less than 10 feet in width nor exceed 18 feet in width.

b. All driveways shall lead to covered parking equipped with garage doors.

c. No carports are permitted that are visible from the public right-of-way.

8. Landscaping. All unpaved portions of the front and exterior side yards shall be improved and maintained with appropriate landscaping materials. Not more than 35 percent of the front and exterior side yard setback area may paved or developed in non-plant materials.

9. Fencing. The maximum height of a fence located within the front setback is three and one-half feet. All fencing within the front yard shall be visually open such as a picket or wrought iron style fence. No opaque walls are permitted unless the fence or wall is setback from the front property line (or exterior side yard) a minimum of six feet and the property between the wall and the property line is fully landscaped.

10. Nonconforming Structures. A reconstruction permit shall not be required to repair or reconstruct a nonconforming structure except if the proposed reconstruction varies in any way in exterior design from the previous building being repaired or replaced. (Ord. 2000-27 § 6 (part), 2000).

## 24.10.4240 DESIGN REGULATIONS.

1. All projects involving exterior construction or remodeling resulting in any increase of the floor area developed under this part will require a design permit pursuant to Chapter 24.08 Part 5.

(Ord. 2000-27 § 6 (part), 2000).

## **Chapter 24.18 NONCONFORMING USES AND STRUCTURES\***

\* Editor's Note: Chapter 24.18, Nonconforming Uses and Structures, has been amended in its entirety by Ordinance 90-15, adopted 5-22-90. Prior ordinances contained in this chapter include portions of Ords. 85-05 and 89-10.

### **24.18.010 Purpose.**

The purpose of this chapter is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this title for the district in which they are located. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan.

(Ord. 94-33 § 76, 1994; Ord. 90-15 § 1, 1990).

### **24.18.020 General Application.**

1. Any lawfully established building or structure, use of a building or structure, existing at the effective date of this title, or of any amendments thereto, that does not conform to the regulations for the district in which it is located, shall be deemed to be legally nonconforming and may be continued, except as otherwise provided in this chapter.

2. Any legal nonconforming use may be continued, provided there is no increase in the intensity of such use.

3. Any legal nonconforming building or structure shall not be made more nonconforming.

4. A building, structure or part thereof for which a building permit was issued prior to the enactment of amendments to this title making aspects of the building or structure nonconforming may be completed provided that work is prosecuted continuously and without delay. When completed, such building shall be deemed to be a legal nonconforming structure and shall thereafter be subject to the regulations set forth herein.

5. A building, structure, or use nonconforming only because of noncompliance with setbacks from a watercourse or wetland as required in Section 24.08.2100, shall be considered legally nonconforming.

~~6.5.~~ Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official. (Ord. 90-15 § 1, 1990).

### **24.18.030 Nonconforming Structures - Enlargement and Alterations.**

A nonconforming structure may be enlarged or structurally altered, provided that it is not made more nonconforming.

1. Exception. When a single-family residence has nonconforming side or rear yards, additions to such structures shall be permitted on the first floor, while maintaining side and rear yards no less than existing yards, and provided a design permit is obtained. (Ord. 90-15 § 1, 1990).

### **24.18.040 Nonconforming Structures and Uses - Reconstruction.**

A nonconforming structure which is damaged or destroyed by fire, flood, wind, earthquake, or other disaster may be repaired or reconstructed. A nonconforming structure damaged to more than fifty percent of its value as determined by the chief building official shall require approval of a reconstruction permit (Chapter 24.08, Part 20). Buildings or structures damaged more than fifty percent as described above that are nonconforming only because of noncompliance with setbacks from a watercourse or wetland as required in Section Part 21 may

Ordinance No.

be reconstructed subject to a building permit only provided that the General Requirements in Section 24.08.2030 are met.

(Ord. 90-15 § 1, 1990).

**24.18.050 Nonconforming Use - Change.**

1. Where a nonresidential use is nonconforming because of failure to meet parking requirements, another nonconforming use may be substituted, provided its sole nonconformity pertains to parking and its parking requirement does not exceed the parking requirement for the use it replaces.

2. When a nonconforming use in a residential R- District is changed to a permitted use, it shall meet the Zoning Ordinance requirement for the permitted use.

(Ord. 90-15 § 1, 1990).

**24.18.060 Nonconforming Use - Expansion Prohibited.**

Any nonconforming use may be maintained and continued, provided there is no expansion in the area or volume occupied or devoted to such nonconforming use, and further provided there is no increase in the intensity of such nonconforming use except as otherwise provided in this title.

(Ord. 90-15 § 1, 1990).

**24.18.070 Nonconforming Use - Discontinuance.**

1. Any nonconforming, nonresidential use that is nonconforming due to district use regulations and/or violates performance standards and which is discontinued or abandoned or otherwise ceases operation for a period of six months or more shall not be resumed, and all subsequent use of such structure or portion of structure or site shall conform to this title. An administrative use permit shall be required for a new use exceeding the parking requirement for the use it replaces. The approving body shall find that the reduction in parking requirements will not adversely affect parking on adjacent and nearby streets and properties.

2. Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, regardless of the period of time such conforming use occupies the building, such premises shall not thereafter be used or occupied by a nonconforming use.

3. Any uses nonconforming by reason of noncompliance with performance standards established herein shall be deemed illegal until compliance with performance standards is achieved.

4. Notwithstanding the provisions of subsection (1), above, any nonconforming use which operates on property being acquired by the city or redevelopment agency by eminent domain or under threat of condemnation and which is required to discontinue or otherwise cease operation because of construction activities undertaken by the city or redevelopment agency may resume said use without losing its status as nonconforming: (1) within two years; or (2) within six months after the city's or redevelopment agency's construction activities are completed so as to enable said use to resume, whichever is later. Nothing contained in this subsection shall be construed as having any effect upon the city's or redevelopment agency's proprietary interest in property acquired by eminent domain or under threat of condemnation.

(Ord. 2000-19 § 1, 2000; Ord. 98-13 § 1, 1998; Ord. 92-19 § 1, 1992; Ord. 90-15 § 1, 1990).

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Ordinance No.

**24.18.080 Nonconforming Use - Maintenance, Repairs and Nonstructural Alterations to buildings.**

1. Normal and routine maintenance or nonstructural alterations of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, rendering the space more usable, or complying with the requirements of law shall be permitted.
  2. Structural alterations or enlargement of the building containing nonconforming, nonresidential uses shall be permitted only to accommodate a conforming use, or when made to comply with the requirements of the law.
  3. Buildings containing nonconforming residential uses may be altered to improve liveability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.
- (Ord. 90-15 § 1, 1990).

**24.18.090 Nonconforming Use - Conversion to Conditional Use.**

Any use legally existing on the effective date of this title, or amendments thereto, which is listed as a conditional use in the district in which it is located but which has never obtained a conditional use permit, shall be and remain a nonconforming use until a conditional use permit is obtained as provided in this title.

(Ord. 90-15 § 1, 1990).

**24.18.100 Reserved.**

**24.18.110 Burden of Proof.**

1. In any administrative or judicial proceeding wherein it is claimed that a structure or use is allowable as a nonconforming structure or use, the party asserting that such nonconforming status exists shall have the burden of providing proof of the same.
  2. In any administrative proceeding such burden of proof shall be met only if the following findings can be made:
    - a. That the structure or use was lawful when commenced; and
    - b. No conditions have occurred since then that would require its abatement; and
    - c. No unlawful expansion, enlargement, or intensification of this structure or use has occurred and remains in place.
- (Ord. 90-15 § 1, 1990).

**Chapter 24.22 DEFINITIONS**

**24.22.498 Lot Area, Net.**

The area within the lot lines with less than thirty-percent slope and not within a riparian corridor as defined in Section 24.08.2110 (g) or a Floodplain (F-P) District, any stream or permanent body of water.

(Ord. 85-05 § 1 (part), 1985).

Exhibit #4  
STC-MAJ-1-06  
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## **GEOLOGIC HAZARDS GOALS, POLICIES AND PROGRAMS**


**GOAL S 1: Minimize geologic hazards to people and property that result from conditions of the land and human activity.**


### **Policies and Programs:**


1.1 Control development deemed hazardous due to steep and unstable slopes. (See policy EQ 3.2.)

 1.1.1 Require engineering geology reports when, in the opinion of the Planning Director, excavation and grading have the potential to create unstable soil conditions.

 1.2 Mitigate hazards posed by cliff retreat. (See policy EQ 3.3)

 1.2.1 For development adjacent to cliffs, require setbacks for buildings equal to 50 years of anticipated cliff retreat.

 1.2.2 Require site specific geologic investigations for all development within 100 feet of existing coastal bluffs.

 1.2.3 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. (See policies under EQ 4.1.3, PR 1.7.6)

### **C. SEISMIC HAZARDS**

Earthquakes strike quickly, without warning, and with their secondary effects (landslides, tsunamis, liquefaction), can leave an aftermath of extensive damage, injury, and death. While there are no formally recognized faults within the City, it lies within 15 miles of at least 12 of 13 major faults and fault systems placing it in an area of high seismic risk.

- 3.4.9 Encourage the State Department of Parks and Recreation to prepare and implement a management plan for Natural Bridges Marsh pursuant to policies NB 1.5, NB 1.5.1-1.5.4 in ASP pp. 461-468.
- 3.4.10 Implement the Neary Lagoon Management Plan as excerpted in ASP pp. 473-491.
- 3.4.11 Implement the San Lorenzo River Enhancement and Design Plans as summarized in ASP pp. 494-509.
- 3.4.12 Implement the Moore Creek Corridor Management and Access Plan as excerpted in ASP pp. 453-458. (See policy EQ 3.1.5)
- 3.5 Protect coastal recreation areas, maintain all existing coastal access points open to the public, and enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act. (See policies under EQ 4.1 and PR 1.7)
  - 3.5.1 Protect coastal bluffs and beaches from intrusion by non-recreational structures and incompatible uses and along the shoreline, require new development or remodeling to be sited and designed so as to avoid a "wall" of buildings.
  - 3.5.2 Ensure that development does not interfere with the public's right to access the ocean (where acquired through use or other legislative authorization).
  - 3.5.3 Require new development and public works projects to provide public access from the nearest public roadway to the shoreline and along the coast, except where it is inconsistent with public safety, protection of fragile coastal resources, or where adequate access exists nearby.
  - 3.5.4 Wherever feasible and appropriate, distribute public facilities (including parking areas) throughout the coastal recreation area to mitigate the impacts of overcrowding or over-use by the public of any single area.
  - 3.5.5 Develop and implement plans to maximize public access and enjoyment of recreations areas along the coastline. (See Policy PR 1.7.)



**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
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January 5, 2016

Eric Marlatt, Zoning Administrator  
City of Santa Cruz  
809 Center Street  
Santa Cruz, CA 95060  
ATTN: Ryan Bane, Senior Planner

**Subject: 1307 W. Cliff Drive**  
**Coastal Commission Staff Comments on Coastal Permit No. CP15-0157**

Dear Mr. Marlatt:

We have reviewed the staff report for the above-referenced project that was received in our office on December 28, 2015 and have the following comments:

1. **Nonconforming Use/Ocean Front Recreation Zoning District.** The project involves extensive redevelopment of an existing legal, nonconforming single family residence, including: a new foundation (which would raise the structure by 6 inches); an upgraded septic system; new electrical, mechanical and plumbing systems; exterior improvements including new windows, doors, trim, siding, copper gutters and roofing, and a new deck. The project also proposes significant improvements to an existing detached unit, including a new kitchenette, bathroom and French doors. Additionally, a new retaining wall is proposed along the outward edge of the existing driveway.

The City's nonconforming use/structure ordinance is part of the certified Local Coastal Program (IP Section 24.18.010). The underlying purpose of any nonconforming use/structure ordinance is ultimately the elimination of the nonconformity over time. In order to achieve this end, the ordinance limits the scope and extent of allowable improvements to nonconforming structures to normal and routine maintenance for the purpose of preserving its "existing condition" (IP Section 24.18.060(1)) and allows for limited alterations to "improve livability" (IP Section 24.18.060(3)).

In this case, the parcel at issue is zoned Ocean Front Recreation (OF-R), and is located within the Shoreline Protection Overlay (SPO) and West Cliff Drive Overlay (WCD). The purpose of the OF-R zoning district is "to ensure the protection of coastal resources and views; to provide public access and maintenance of public use; to assure that coastal development is consistent with the Coastal Land Use Plan and General Plan; and to promote the safe occupancy and the reasonable use of lands subject to continuous erosion, such as coastal cliffs and beaches." (IP Section 29.10.1900). **Residential use is not a permitted use in this zoning district, and single family dwellings are not**

**allowed (IP Section 24.10.1910).** Thus, the existing residence is nonconforming with respect to the standards of the OF-R zoning district.

As a general matter, we are concerned that the scope and extent of the proposed redevelopment project will result in the indefinite continuation of the nonconforming structure and use at this location, particularly with respect to the foundation improvements. More specifically, it does not appear that the scope and extent of the proposed redevelopment is consistent with the language or intent of the nonconforming use ordinance as it goes well beyond what would normally be considered “normal and routine” maintenance for the purpose of preserving the “existing condition.” Moreover, the proposed redevelopment of the detached cottage appear to be in direct conflict with the directives of the nonconforming use ordinance because a new kitchenette and the conversion of a closet to a full bathroom<sup>1</sup> would increase the intensity of the nonconforming residential use of this structure in direct conflict with IP Section 24.18.060.

In addition, the staff report states that “[i]n order to maintain the legal nonconforming status of the residential use, the structure must remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are to remain, and that the remodel does not qualify as demolition.” However, we are not aware of any reference to this standard in the nonconforming use ordinance. What is the basis for this statement/standard? As discussed above, a significant amount of work is being proposed beyond the exterior walls.

2. **Shoreline Protection Overlay.** Additionally, the subject property is zoned in the Shoreline Protection Overlay District. The purpose of the Shoreline Protection Overlay District is to “preserve and protect the coastal and environmental resources in the city of Santa Cruz. It is furthermore intended that the Shoreline Protection Overlay District accomplish the following: minimize cut, fill, earthmoving, riprap placement, grading operations, and other such man-made intrusions in coastal areas; to control erosion; to protect development from geological or other coastal related hazards; to protect public views; to protect and enhance shoreline access for the public; to protect paleontological resources; to generally implement the policies of the Local Coastal Land Use Plan” (IP Section 24.10.2400). Moreover, the Shoreline Protection Overlay requires that the reviewing body (i.e. Zoning Administrator) make extensive findings as set forth in IP Section 24.10.2430, including that the development “minimizes alterations of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.”

In this case, the staff report references a geologic report and supplement and discusses the required findings, however, the report does not appear to discuss the stability of the site in relation to the appropriate bluff setback, or in relation to the existing shoreline

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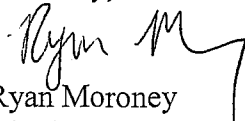
<sup>1</sup> The staff report references the removal of an existing bathroom “pop out” in the detached cottage, however it is not clear whether this pop out was constructed with the benefit of a permit.



protection (rip rap revetment) or to what extent the existing structures are reliant on this shoreline protection. We previously identified to City staff that it appears that a significant portion of this rip rap revetment is unpermitted. Moreover, it is unclear whether the shoreline protection is located on public property, including, potentially public trust land owned by the State Lands Commission. We believe that these issues should be more fully explored prior to authorizing the proposed redevelopment project.

Thank you for your consideration of these comments. We look forward to continuing to work with the City and Applicant as this project moves through the local review process. If you would like to discuss the project, please do not hesitate to contact me at the address and phone number listed above.

Sincerely,

  
Ryan Moroney  
District Supervisor  
California Coastal Commission

Ryan Moroney  
California Coastal Commission  
Central Coastal Office  
725 Front Street, Suite 300  
Santa Cruz, Ca. 95060-4506

March 23, 2016

RE: Response to Appeal No. A-3-STC-16-0016; 1316 West Cliff Dr.

Mr. Moroney:

I am writing to respond to the appeal filed on 2/2/16 regarding the City of Santa Cruz's approval of a Coastal Development Permit allowing the remodel of an existing house and guest house located at 1307 West Cliff Drive. As that permit plainly conforms to the City's Local Coastal Program, the appeal does not raise a "substantial issue" of conformance with the LCP.

These structures were built approximately 78 years ago and many of their components have either fallen into a state of disrepair or outlived their useful lifespan. To ensure these structures are safe to occupy, structurally sound, and current with new building code requirements, the homeowners must repair and maintain them. Likewise, some improvements are necessary.

The existing residential use is a lawful non-conforming use under the City's municipal code. The property is located within the OFR (Ocean Front Recreational) zone district. Single family homes are generally not a permitted use within this district. Because the houses were built before this designation was placed on the property, the use is considered a non-conforming use. Non-conforming structures can be remodeled. In fact the City's regulations state under what circumstances remodeling is allowed. As will be discussed more fully below, and as the City implicitly concluded when it issued a permit, this project is consistent with these regulations.

### **1. Nonconforming Regulations**

The City's Non-Conforming Use regulations govern the proposed work to be performed on these structures. Indeed, the City Zoning Administrator found the proposal to be consistent with these codes.

The following code sections support the owners' ability to remodel the house in accordance with the proposed plans:

Section 24.18.010: "The purpose of [the Non-Conforming Use regulations are] to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this title for the district it is located."

- This code section is not intended just for the elimination of non-conforming uses, but also provides for the control and improvement of such non-conforming uses. In fact, the code provides for the continuation of a non-conforming use as long as the use is not expanded or intensified. Here, this project is in keeping with this regulation because it allows for



control (i.e., conditions of approval, building permits) and improvements (repair and renovation of the structures that are unsafe, deteriorated or not in keeping with current building code requirements).

24.18.020(2): "Any legal nonconforming use may be continued, provided there is no increase in the intensity of sure use."

- Here, no increase in square footage is proposed. In fact, the square footage of the house is being reduced and no additional bedrooms are being proposed. (See Sheet A2.0 of architectural plans). Therefore, without an increase in square footage or any additional bedrooms, there would be no increase in intensity for residential uses (and none of the typical triggers for additional parking needs).

Section 24.18.020(6): "Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official."

- Here, according to a City of Santa Cruz building inspector, the structures are unsafe because of a failing foundation. During the permitting process, and in order to ensure that the proposal is in keeping with this requirement, the City required the owners to apply for a special inspection by the Building Official to inspect the house and the foundation. They also required a review of the foundation and the soils by a structural engineer and a geotechnical engineer, respectively. These inspections were performed by Paul Endres, licensed structural engineer and Rick Parks, licensed geotechnical engineer. The results of their investigation are attached. (See Attachment 1, 3, and 5). Based on this information and the inspections performed by the Dean Jones, City building inspector, and Nancy Concepcion, associate planner for the City, Deputy Building Inspector Eric Simonson concluded that "the foundation supporting these structures are failing due to poor soil conditions the original 1940's buildings are sitting on as well as lack of proper reinforcement in the concrete." He recommended we improve the structural integrity and safety of the foundation system as soon as possible. (See attachment 10). The proposed project seeks to follow that recommendation by strengthening and restoring these structures to a safe condition.

Section 24.18.060: "Any nonconforming use may be maintained and continued provided there is no expansion in the area or volume occupied or devoted to such nonconforming use except as otherwise provided in this title."

- As stated above, the homeowners are asking to be allowed to maintain and make safe the existing structures, not increase the volume or expand the area. The structures are being reduced in size. Also the removal of the fireplace chimney and the dormers from the main house will reduce the bulk of the house.

Section 24.18.080(1): "Normal and routine maintenance or nonstructural alterations for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical

depreciation, rendering the space more usable, or complying with the requirements of law shall be permitted."<sup>1</sup>

- Much of the proposed work would fall under what the City defines as routine maintenance and repair. This includes remodel work such as painting, window and door replacement, siding and trim repair or replacement, reroofing, plumbing and electrical repairs, and upgrades, etc. The City has also ruled that the remodel work cannot remove more than 50% of the exterior wall; or that work would constitute reconstruction and would not be allowed. (See Attachment 11). Therefore, we were asked to submit calculations demonstrating that the remodel was in fact under the 50% threshold. These calculations show that we propose to keep 51.9% of the exterior wall of the main house and 63% of the wall of the guest house. (See sheet A2.0 of architect's plans).

Section 24.18.080(3): Buildings containing nonconforming residential uses may be altered to improve livability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building."

- Nothing is being proposed that would increase the number of units or increase the bulk or mass of the units.

## **2. House Design**

Notwithstanding appellants' assertion that this house is a landmark and a Cotswold Cottage design, this house is not a historic structure or landmark. At the hearing the Zoning Administrator stated that in 2012 the City conducted a review of several homes in the City to determine if they had any historic significance. He stated that this house was not considered historic and did not have any elements of historic significance. As for the assertion that this house is a Cotswold Cottage, the project architect has considered this statement and finds it to be without merit (See attachment 7). These sort of cottages from the Cotswold area of England were built in medieval times with slate or thatch roofs and brick, stone or stucco siding. This house is neither historic nor of the Cotswold design.

In fact there is no one style of house that is typical along West Cliff Drive or the surrounding streets. There are a variety of styles and designs. But the thing that sets this house apart is that it is located on the ocean side of West Cliff Drive with no other houses surrounding it. The main purpose for replacement of the dilapidated wood siding is to provide proper weatherproofing. The proposed replacement siding will have a torched finish which increases longevity and is more durable in sea locations. The proposed finishes will also be more complimentary to the natural setting by blending in more with the surrounding landscape. The architect has also stated that the dormers are being removed because they leak and are causing water damage to the house. The installation of the skylights to replace them is to allow more natural light into the structure. This is completely in keeping with the requirements of maintenance and repair of the existing house. And since this is not a historic structure, this type of change is permitted and consistent with City code and the LCP.

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<sup>1</sup> This section applies only to ordinary maintenance and repairs, not structural alterations, which are addressed in another section. (See city code section 24.18.020(6) above).



### **3. Trees**

The appellants have offered no justification as to why the project would have a negative effect on the trees. By contrast, the City staff, our project arborist, and our landscape architects agree that the project, as proposed, will be beneficial for the trees. Maureen Hamb, certified arborist for the project, inspected and evaluated the two Monterey cypress trees and the eucalyptus on the property. (See Attachment 6). She concluded that both the Cypress and Eucalyptus are in generally good health but are subject to ongoing erosion. She recommends site erosion be controlled and the trees be pruned. These recommendations have been incorporated into the conditions of approval for the project. In addition the conditions of approval also require that all trees be protected by fencing during construction and said fencing shall be installed to the satisfaction of the Planning Director. So there is already direct oversight for the protection of the trees by the City of Santa Cruz.

### **4. Erosion and Drainage**

The proposed project stands to improve the property's erosion issues. The City has for a long time had an undersized storm drain pipe that has just recently been replaced which was causing erosion underneath the property driveway as well as the public walkway adjacent to the property. Part of this project would repair the driveway and install a soil pin retaining wall along the edge of the driveway to ensure no further erosion will occur. This recommendation came from the project geotechnical engineer, Rick Parks. (See attachment 1 and 2). Mr. Parks also confirmed that the removal of the dilapidated foundation will not cause more erosion. Also, the installation of the soil pin retaining wall will not negatively affect the public walkway adjacent to the property. In fact, because the wall will aid the prevention of erosion, that, when coupled with the repair of the storm drain by the City, there should be very positive effects on the public pathway. In addition, based on the recommendation from the project arborist, Maureen Hamb, the existing ice plant on the property is being removed because it does not help prevent erosion. She recommends replacing the ice plant with native, non-invasive coastal adapted plants. (See attachment 6). The project landscape architect, Joni Janecki and Associates have prepared a landscape and erosion control plan that meets these recommendations. (See Plan Sheets L1.0 and L1.1 and attachment 8).

The proposed project would also improve site drainage problems. The site as it exist today is poorly drained. The existing concrete deck is being replaced with a wooden deck set wide enough apart to allow for improved drainage. The structures will also have gutters installed to collect and control roof runoff and properly convey it. These were recommendations from the project geotechnical engineer. (See attachment 1 and 4). The proposed site and landscape plan both are intended to correct drainage and erosion control issues that have gone unchecked for several years.

### **5. Reconstruction Permit**

The appellants have said that the project is inconsistent with the West Cliff Drive Overlay District because a Reconstruction Permit was not required. Section 24.08.2000 (Reconstruction Permits) states, "A nonconforming building or structure which was damaged as a result of a natural disaster by more than fifty percent as determined by the building official, may be repaired

or reconstructed by first obtaining a reconstruction permit." The general requirements state, "Except as provided below, a reconstruction permit shall be filed with the department of planning and community development within one year from the disaster. Reconstruction shall be started within two years from issuance of the reconstruction permit and diligently prosecuted to completion." It is clear that the Reconstruction Permit is required to review nonconforming structures that have been damaged as a result of a natural disaster. Here, there was no damage as a result of natural disaster, and hence no need for a Reconstruction Permit. Thus, the appellants' argument has no merit: the proposed repair and maintenance does not require a Reconstruction Permit

## **Conclusion**

There is no substantial issue whether this project is consistent with the City of Santa Cruz regulations and the Local Coastal Plan. The fact that the appearance of the remodeled structures will be different from the existing structures is not in violation of any provision of the LCP. The remodel will reduce the square footage and bulk of the structures, improve the view of the public by having the structures blend in more with the natural surroundings, and address the issue of ongoing erosion that will be beneficial to the public pathway adjacent to the property. The appellants' arguments are not supported by the facts. Nor have they provided any expert analysis to challenge the inspections, plans, calculations or opinions of the project experts or the City staff. Therefore I ask that you uphold the City's action and find that there is no Substantial Issue to hold a hearing.

Thanks for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Deidre Hamilton". The signature is fluid and cursive, with the first name "Deidre" written in a larger, more prominent script than the last name "Hamilton".

Deidre Hamilton

Cc: Shige and Amy Honjo  
Kate Courteau  
Ryan Banes  
David Ivester



Attachments:

1. Geotechnical Response to Coastal Commission Appeal, dated 3/15/16
2. Supplement Geotechnical Recommendations Driveway retaining wall, dated 9/4/15
3. Supplemental Geotechnical Recommendations for Seismic Upgrades, dated 5/12/15
4. Geotechnical Investigation for the proposed remodel of Main Residence and Guest House, dated 1/8/15
5. Letter from Paul Endres regarding structural repairs, dated 5/1/15
6. Tree Assessment and Pruning Specifications prepared by Maureen Hamb, dated 4/1/16
7. Architectural Response to Coastal Commission Appeal, dated 3/18/16
8. Landscape Architect Response to Coastal Commission Appeal from Joni Janecki, dated 3/17/16
9. Zoning Permit with Finding and Conditions
10. Email correspondence from Eric Simonson, Deputy Building Official, regarding foundation, dated 6/1/15
11. Memorandum from Eric Marlatt, Principal Planner to Current Planners regarding Alteration/Remodel vs. Reconstruction of a Nonconforming Structure, dated 1/22/15

Project No. SC10766  
15 March 2016

SHIGE AND AMY HONJO  
1307 West Cliff Drive  
Santa Cruz, California 95060-6355

Subject: Geotechnical Response to Coastal Commission Appeal

Reference: Proposed Remodel of Existing Residences  
1307 West Cliff Drive  
APN 003-284-05  
Santa Cruz, California  
Appeal No. A-3-STG-16-0016

Dear Mr. and Mrs. Honjo:

This letter addresses the geotechnical engineering aspects of the Appeal from Coastal Permit Decision of Local Government dated 2 February 2016 regarding the proposed remodel of the existing residences at 1307 West Cliff Drive in the City of Santa Cruz, California.

#### **Geotechnical Reports to Date**

Our firm initially completed a Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House at 1307 West Cliff Drive dated 8 January 2015. The purpose of our January 2015 investigation was to develop geotechnical design criteria for new foundation elements related to the safety of the two structures, the main residence and the guest house.

To delineate the project soil profile, we drilled and sampled an exploratory boring on the southern perimeters of the main residence and the guest house using a limited access drill rig with a sampling tripod. Based on Standard Penetration Testing, we encountered loose, clayey/silty sands to approximately 2 feet below grade at both boring locations. Dense, cemented silted sands were found at 2 feet to approximately 5 feet below grade. Medium dense silty sands were found to about 10 feet below grade where medium dense, weathered sandstone bedrock was encountered. Competent, dense to very dense bedrock was found at 12 feet below yard grade.

It is very difficult to determine accurately the structural integrity and bearing capacities of the existing foundation systems of the 75+ year old structures at the project site. As such, our January 2015 Geotechnical Investigation recommended new foundation loads should be supported by foundation elements which penetrate the loose, near surface soils and are embedded at least 2 feet below grade to provide consistent vertical and lateral bearing. The proposed remodel of the main residence and guest house may generate new foundation loads which will need to be carried by either the existing foundations or new foundation elements.

Exhibit 9



Mr. and Mrs. Honjo  
Project No. SC10766  
1307 West Cliff Drive  
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Page 2

Subsequent to our January 2015 Geotechnical Investigation, the structural engineering aspects of the 1930's era main residence and guest house were evaluated in regard to seismic safety by Paul Endres, SE (letter to the City of Santa Cruz dated 1 May 2015). Based on Mr. Endres' analysis, we understand the existing foundations consist of concrete masonry units and slabs on grade. The foundations were observed by Mr. Endres to be distressed with large cracks, lack of steel reinforcement, and deteriorating concrete.

We next prepared the letter report Supplemental Geotechnical Recommendations for Seismic Upgrade dated 12 May 2015. To further evaluate the existing foundation systems supporting the main residence and guest house, the footings were exposed to determine the depths of embedment. At the southeast corner of the main residence, the perimeter footing was found to be embedded approximately 9 inches below grade not including the surface mulch layer. At the southeast corner of the guest house, we the perimeter footing is embedded 10 to 12 inches below grade.

The foundation systems of the main residence and guest house were observed to be distressed and bear upon at least one foot of loose soils. With the existing shallow foundation embedment, severe seismic shaking could damage the existing structures and endanger the occupants. To improve the structural integrity of the two residences and safety of the occupants, we recommended a new foundation system be installed beneath both the main residence and the guest house. The new foundations should be designed and constructed per the recommendations outlined in our January 2015 Geotechnical Investigation and in conformance to the 2013 California Building Code.

On 4 September 2015 we completed the letter report Supplemental Geotechnical Recommendations for a Driveway Retaining Wall. The existing driveway is constructed of paver blocks contained by an 8-inch square concrete beam along the outboard edge. Surface drainage flowing over the eastern perimeter of the driveway has eroded a three feet high scarp below the driveway. We understand the West Cliff Drive storm water drain inlet at the east end of the driveway has historically backed up during long duration rainfall with the street storm water then flowing onto the driveway at 1307 West Cliff and over the driveway perimeter edge. The deterioration of the slope below the driveway has facilitated piping of the soils beneath the driveway and differential settlement of the pavers.

To repair damage done, support the outboard edge of the entrance driveway, and provide safe access to the residence; we recommended a retaining wall be constructed. From an engineering perspective, an efficient method to preserve the outboard perimeter of the entrance driveway would be to install a soil pin retaining wall, adjacent the outboard perimeter of the existing entrance driveway. A soil pin wall consists of a single line of drilled, cast-in-place piers forming a continuous retaining structure through

Mr. and Mrs. Honjo  
Project No. SC10766  
1307 West Cliff Drive  
15 March 2016  
Page 3

the principle of soil arching. The soil pin retaining wall system should be constructed using concrete colored to mimic the appearance of the adjacent natural bluff.

### **Proposed Project - Erosion Potential and Geological Stability Impact**

The appellants state the removal and replacement of the existing foundation systems "might well have a significant erosion and geological stability impact on this relatively tiny outcrop along our coast." The proposed project to replace the 70+ years old distressed foundations and install a driveway retaining wall, designed and constructed in accordance to current building codes, will not cause erosion or geological instability. The construction of the driveway retaining wall will not negatively impact the steep and narrow access path to the beach adjacent the parcel line. The proposed project will also not disturb the soil and rock supporting the three heritage trees on site.

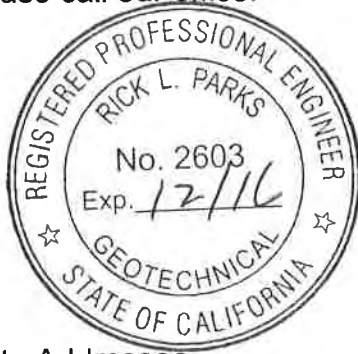
### **Effect of Full Gutters upon Project Site**

As outlined in our January 2015 Geotechnical Investigation: the remodeled structures should include full gutters to collect and control roof runoff; the collected runoff should be conveyed to either the street storm drain system or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel; and concentrated surface runoff should not be allowed to flow toward or over the top of the coastal bluff.

Control of project site runoff is essential for the preservation of the coastal bluff and to protect the structural integrity of the two residential structures at the project site.

As previously stated, we understand the West Cliff Drive storm water drain inlet at the east end of the driveway has historically backed up during long duration rainfall with the street storm water then flowing onto the driveway at 1307 West Cliff. We also understand the City of Santa Cruz has recently replaced the storm drain inlet grate at the east end of the driveway at 1307 West Cliff. and videotaped the storm drain pipe for blockage to improve storm drain system capacity.

If you have any questions concerning this letter or the geotechnical aspects of the project, please call our office.



Respectfully submitted,

**HARO, KASUNICH & ASSOCIATES, INC.**

A handwritten signature in black ink, appearing to read "Rick L. Parks".

Rick L. Parks, GE 2603  
Senior Geotechnical and Coastal Engineer

RLP/sr

Copies: 1 to Addressee  
3 to Hamilton Swift; Attn: Deidre Hamilton (+electronic copy)



Project No. SC10766  
4 September 2015

SHIGE AND AMY HONJO  
1307 West Cliff Drive  
Santa Cruz, California 95060-6355

Subject: Supplemental Geotechnical Recommendations

Reference: Driveway Retaining Wall  
1307 West Cliff Drive  
APN 003-284-05  
Santa Cruz, California

Dear Mr. and Mrs. Honjo:

This letter provides supplemental geotechnical engineering recommendations for the design and construction of a retaining wall to support the outboard edge of the existing driveway at 1307 West Cliff Drive in Santa Cruz, California. The entrance driveway on the eastern side of the Honjo family residence is at the top of a moderately steep slope and has been undermined. Uncontrolled storm water runoff has exacerbated the recession of the top of the slope and formed an erosion scarp below the driveway perimeter.

Our firm previously completed a Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House at 1307 West Cliff Drive dated 8 January 2015.

The Honjo family residence is situated at the top of the coastal bluff on the seaward side of West Cliff Drive. Based on our November 2014 subsurface investigation, the coastal bluff consists of a soil mantle approximately 10 feet thick overlying sandstone/siltstone bedrock. The bedrock is subject to wave action erosion. Below the top of the bluff, the 10 feet thick soil mantle slopes moderately steep to steeply to the bedrock contact.

The existing driveway is constructed of paver blocks contained by an 8-inch square concrete beam along the outboard edge. Surface drainage flowing over the eastern perimeter of the driveway has eroded a three feet high scarp below the driveway, see the attached Photo #1. We understand the West Cliff Drive storm water drain inlet at the east end of the driveway has historically backed up during long duration rainfall with the street storm water then flowing onto the driveway at 1307 West Cliff and over the driveway perimeter edge. We also understand the City of Santa Cruz has recently replaced the drain inlet grate and investigated the integrity of the storm drain pipe in an effort to improve the poor drainage. The deterioration of the slope below the driveway has facilitated piping of the soils beneath the driveway and differential settlement of the pavers, see the attached Photo #2.

To repair damage done, support the outboard edge of the entrance driveway, and provide safe access to the residence; we recommend a retaining wall be constructed. From an engineering perspective, an efficient method to preserve the outboard perimeter of the entrance driveway would be to install a soil pin retaining wall, adjacent the outboard perimeter of the existing entrance driveway. A soil pin wall consists of a single line of drilled, cast-in-place piers forming a continuous retaining structure through the principle of soil arching. Soil arching allows restraint of the active earth forces tending to promote movement of the soil material between the piers.

The soil pin wall at the project site will consist of closely spaced piers drilled immediately adjacent the driveway perimeter concrete beam. To minimize the thickness of the wall, we recommend the drilled piers be 12 inches to 18 inches in diameter as lateral forces dictate. The drilled piers are structurally connected to one another with a concrete grade beam. At the project site the grade beam would extend 4 feet below the existing driveway perimeter grade, with the top 3 feet of the grade beam exposed by the erosion scarp located at the apex of the curved driveway alignment. The retaining wall should be designed for an active pressure zone of 6 feet which will accommodate an additional 3 vertical feet of slope recession or erosion to occur in the future.

The majority of the soil pin wall alignment will be initially constructed as a buried structure. As the recession of the slope below the soil pin wall continues, soils below the grade beam and between the soil pin wall piers will become exposed. The exposed soils will be subject to the effects of long term weathering and seasonal saturation. If left unprotected, the exposed soils will deteriorate and/or erode over time thereby eliminating the soil arching between the piers. To protect the exposed soils and maintain the integrity of the soil arching system, it will be necessary to apply a structural shotcrete section between the soil pins as the soil is exposed.

The soil pins piers, grade beam and future shotcrete placed during wall maintenance should be colored so as to mimic the appearance of the adjacent natural bluff.

For soil pin wall design, on-center pier spacing is based upon the internal angle of friction ( $\Phi$ ) of the retained soil for cohesionless soils and unconfined compressive strength of cohesive soils. To determine on-center pier spacing, we utilized methods outlined in the 2000 Caltrans Trenching and Shoring Manual. The exposed soils within the erosion scarp below the perimeter of the driveway consist of loose, granular soils. We recommend the soil pin wall be constructed of drilled piers at a spacing of two (2.0) pier diameters on-center spacing or less.

Soil pin piers at the project site should be embedded deep enough below the driveway to provide lateral and vertical bearing capacity while accommodating an active pressure zone of 6 feet as measured from the top of the driveway. The grade beam at the top of



the soil pin piers should incorporate a raised curb to prevent surface runoff from flowing over the edge of the driveway.

#### **Retaining Wall Design Loads**

The soil pin retaining wall system should be designed to resist both lateral earth pressures and any additional surcharge loading. The project site retaining wall should include a backdrain and be designed to resist a 6 feet high active pressure with an earth pressure of 35 pcf-efw for a cantilever condition with a level backslope.

At the discretion of the project structural engineer, the project site retaining wall may be designed to include a seismic surcharge equivalent to 12 H/ft acting at 0.6 H where H is the height of the active zone.

The above lateral earth pressure assumes that the wall is fully drained to prevent hydrostatic pressure behind the walls. MiraDrain 6000 panels with weep holes through the wall may be used to achieve a drained condition for retaining wall design.

#### **Drilled Piers**

Drilled piers for the soil pin wall should be embedded at least 10 feet deep below the top of the existing driveway for a vertical bearing capacity of 5,000 psf plus a one-third increase for short-term seismic and wind loads for piers placed at 2 diameters on center.

The top 6 feet of the grade beam and soil pin pier system should be treated as a continuous active pressure zone.

For calculating lateral resistance, an equivalent fluid pressure of 400 pcf acting over 2 pier diameters may be used from 6 to 10 feet below the top of the existing driveway. Below 10 feet from the top of the existing driveway, lateral bearing may be increased to 600 pcf acting over 2 pier diameters

All pier excavations should be thoroughly cleaned. The pier excavations must be observed by the geotechnical engineer or his representative prior to placing reinforcing steel and concrete.

#### **Site Drainage**

A curb should be incorporated into the new retaining wall system grade beam to prevent street storm water and project site surface runoff from flowing over the edge of the driveway. We also urge the City of Santa Cruz to continue to investigate the capacity of the street storm drain negatively effecting 1307 West Cliff Drive and mitigate the poor drainage flow if feasible.

To reduce the potential for moisture intrusion beneath the residences, we recommend a gravel curtain drain be constructed along the outboard face of the proposed replacement

Shige and Amy Honjo  
Project No. SC10766  
1307 West Cliff Drive  
4 September 2015  
Page 4


perimeter footings beneath both the main house and cottage. The curtain drains should be constructed using Caltrans Permeable Material, Class 1, Type A. The curtain drains should range in depth from 12 to 18 inches below grade and incorporate a perforated pipe to a sump pump well(s). Collected seepage should be conveyed to either the street drain of an energy dissipater in a non-perforated conduit. The curtain drain gravels should be covered by an impermeable material and capped by at least 3 inches of soil. The project site yard grades and hardscape grades should slope away from the perimeter of the residences to minimize surface runoff flowing into the curtain drain system.

If you have any questions concerning this letter or the geotechnical aspects of the project, please call our office.

Respectfully submitted,

**HARO, KASUNICH & ASSOCIATES, INC.**



  
Rick L. Parks, GE 2603  
Senior Geotechnical Engineer

RLP/sr

Attachments: Photo #1

Photo #2

Copies: 1 to Addressee

3 to Hamilton Swift (+electronic copy)

Attn: Deidre Hamilton

1 to Jonna Alexander Green (electronic copy only)

1 to Kate Courteau (electronic copy only)





Photo #1 - 12 August 2015  
1307 West Cliff Drive  
Erosion scarp and undermining  
of driveway perimeter



Photo #2 - 12 August 2015  
1307 West Cliff Drive  
Soil piping and undermining  
of driveway pavers.

12 08 2015







Project No. SC10766  
12 May 2015

CITY OF SANTA CRUZ  
Planning and Community Development  
809 Center Street  
Santa Cruz, California 95060

Attention: Eric Simonson

Subject: Supplemental Geotechnical Recommendations for Seismic Upgrade

Reference: Replacement of Main Residence and Guest House Foundations  
1307 West Cliff Drive  
APN 003-284-05  
Santa Cruz, California

Dear Mr. Simonson:

This letter provides supplemental geotechnical engineering recommendations for the seismic upgrade of the main residence and guest house at 1307 West Cliff Drive in Santa Cruz, California.

Our firm previously completed a Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House at 1307 West Cliff Drive dated 8 January 2015. The purpose of our January 2015 investigation was to develop geotechnical design criteria for new foundation elements related to the safety and maintenance of the two structures.

To delineate the project site soil profile, we drilled and sampled an exploratory boring on the southern perimeters of the main house and the guest house using a limited access drill rig with a sampling tripod. Based on Standard Penetration Testing, we encountered loose clayey/silty sands to approximately 2 feet below adjacent surface grades at both boring locations. Dense, cemented silted sands were found at 2 feet to approximately 5 feet below grade. Medium dense silty sands were found to about 10 feet below grade where medium dense, weathered sandstone bedrock was encountered. Competent, dense to very dense bedrock was found at 12 feet below yard grade. Our January 2015 soils report recommended new foundation elements penetrate the loose near surface soils and be embedded at least 2 feet below grade.

Subsequent to our geotechnical investigation, the structural engineering aspects of the 1940's era main house and guest house were evaluated by Endrestudio with regard to seismic safety (Paul Endres, SE - letter to City of Santa Cruz dated 1 May 2015). We understand the existing foundations consist of concrete masonry units and slabs on grade. The foundations were observed by Endrestudio to be distressed with large cracks, lack of steel reinforcement, and deteriorating concrete.



Mr. Eric Simonson  
Project No. SC10766  
Replacement of Main Residence and Guest House Foundations  
1307 West Cliff Drive  
12 May 2015  
Page 2

To further evaluate the existing foundation systems supporting the main house and guest house, the footings were exposed on 1 May 2015 to determine the depths of embedment. At the southeast corner of the main house, the perimeter footing was found to be embedded approximately 9 inches below grade not including the surface mulch layer. At the southeast corner of the guest house, the perimeter footing was found to be embedded 10 to 12 inches below grade. Foundation pit locations and photos of the exposed exterior foundation are attached to this letter as Figures 1 and 2.

The foundation systems of the main house and guest house were observed to be distressed and bear upon at least one foot of loose soils. Severe seismic shaking could damage the existing structures and endanger the occupants. To improve the structural integrity of the two residences and safety of the occupants, we recommend a new foundation system be installed beneath both the main house and the guest house. The new foundations should be designed and constructed per the recommendations outlined in our 8 January 2015 Geotechnical Investigation and in conformance to the 2013 California Building Code.

If you have any questions concerning this letter or the geotechnical aspects of the project, please call our office.



Respectfully submitted,

**HARO, KASUNICH & ASSOCIATES, INC.**

Rick L. Parks, GE 2603  
Senior Geotechnical Engineer

RLP/sr

Attachments: Foundation Pit Locations and Photos - Figures 1 and 2

Copies: 2 to Addressee (c/o Hamilton Swift)  
1 to Hamilton Swift (+electronic copy)  
Attn: Deidre Hamilton  
1 to Jonna Alexander Green (electronic copy only)  
1 to Kate Courteau (electronic copy only)  
1 to Endrestudio (electronic copy only)  
Attn: Paul Endres, SE

PHOTO 1  
MAIN HOUSE FOUNDATION PHOTOS

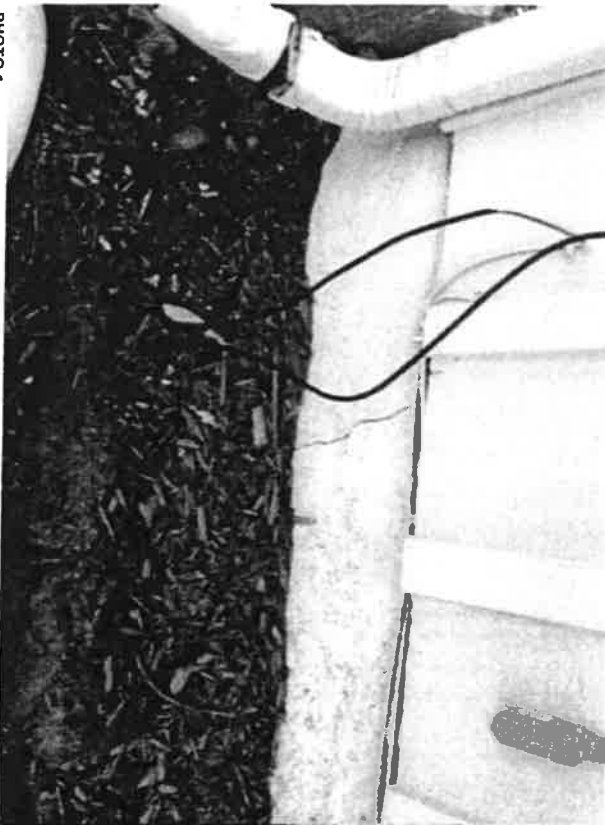


PHOTO 2

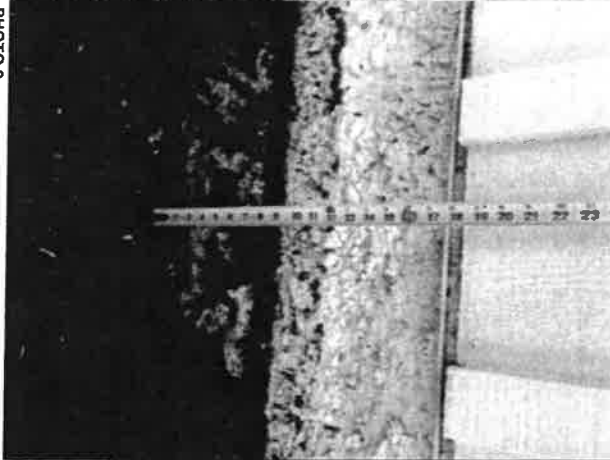
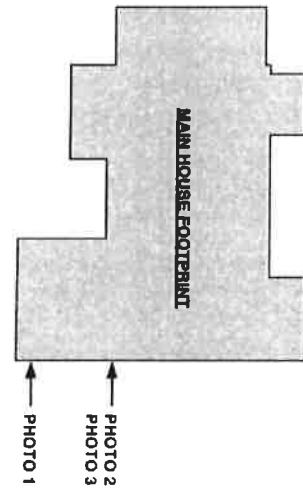


PHOTO 3



MAIN HOUSE FOUNDATION  
PHOTO LOCATIONS  
SCALE: 1/16" = 1'-0" N



# FOUNDATION PHOTOS

1 OF 2

HONJO RESIDENCE 1307 W. CLIFF DR.

DATE:  
3.13.15  
5.8.15

ISSUE:  
SCHEMATIC DESIGN  
HEALTH + SAFETY SUBMITTAL



PHOTO 4  
GUEST HOUSE FOUNDATION PHOTOS



PHOTO 5

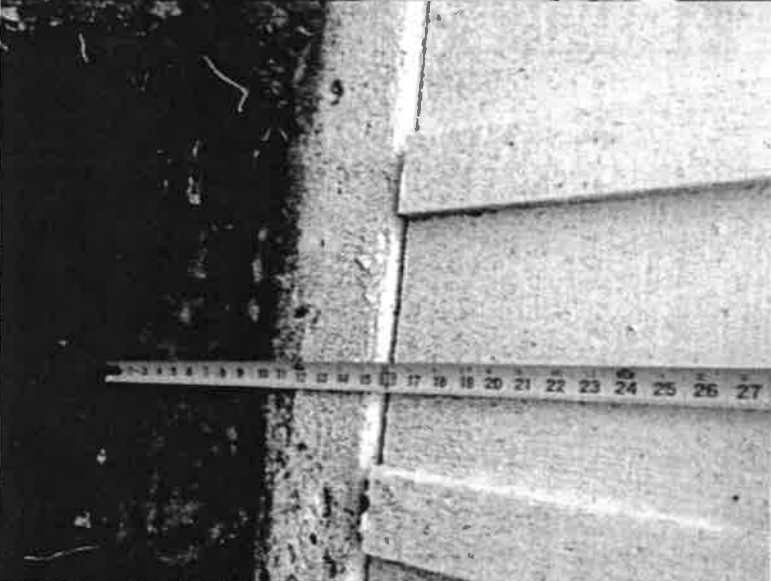
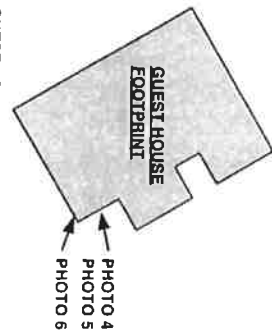


PHOTO 6



GUEST HOUSE FOUNDATION  
PHOTO LOCATIONS

SCALE 1/16" = 1'-0" 



**FOUNDATION PHOTOS**

**2 OF 2**

HONJO RESIDENCE 1307 W. CLIFF DR.

DATE:  
3.13.15  
5.8.15

ISSUE:  
SCHEMATIC DESIGN  
HEALTH + SAFETY SUBMITTAL

**GEOTECHNICAL INVESTIGATION**  
**For the**  
**Proposed Remodel of Main Residence and Guest House**  
**1307 West Cliff Drive**  
**APN 003-284-05**  
**Santa Cruz, California**

**Prepared for**  
**SHIGE AND AMY HONJO**  
**1307 West Cliff Drive**  
**Santa Cruz, California**

**Prepared By**  
**HARO, KASUNICH AND ASSOCIATES, INC**  
**Geotechnical & Coastal Engineers**  
**Project No. SC10766**  
**January 2015**



Project No. SC10766  
8 January 2015

SHIGE AND AMY HONJO  
1307 West Cliff Drive  
Santa Cruz, California 95060-6355

Subject: Geotechnical Investigation

Reference: New Foundation Elements for Existing Residences  
1307 West Cliff Drive  
APN 003-284-05  
Santa Cruz, California

Dear Mr. and Mrs. Honjo:

Haro, Kasunich and Associates are pleased to submit this proposal to perform a Geotechnical Investigation at 1307 West Cliff Drive in Santa Cruz, California. The main residence and guest house are situated at the top of a coastal bluff on the seaward side of West Cliff Drive.

We understand the main residence and guest house will be remodeled. Project plans were not yet been completed at the date of this report. The proposed remodel of the main residence and guest house may generate new foundation loads which will need to be carried by either the existing foundations or new foundation elements.

Based on the difficulty involved in determining the structural integrity and bearing capacities of the existing foundation systems of the 50+ year old structures at the project site, we recommend all new foundation loads be supported by new foundation elements.

To develop geotechnical design criteria for new foundation elements, we first drilled and sampled a total of two exploratory borings on the seaward/southern sides of the main house and quest house using a limited access drill rig with a sampling tripod. At both boring locations, we encountered loose clayey, silty sands to approximately 2 feet below adjacent surface grades. Dense, cemented silted sands were found at 2 feet to approximately 5 feet below grade. Medium dense silty sands were found to about 10 below grade where medium dense, weathered sandstone bedrock was encountered. Competent, dense to very dense bedrock was found at 12 feet below yard grade.

The primary geotechnical considerations for the design and construction of the new foundation elements at the remodeled structures will be embedment of the new foundation elements below 2 feet from existing grade, mitigating severe seismic shaking, and controlling site drainage.

Shige and Amy Honjo  
Project No. SC10766  
1307 West Cliff Drive  
8 January 2015  
Page 2

Either conventional spread or strip footings, isolated pedestal footings or drilled/hand dug piers may be used to support new foundation loads at the project site. Conventional spread footings and isolated pedestal footings should be embedded a minimum of 24 inches below adjacent grade and bear upon the dense cemented sands encountered in our borings. Design of drilled or hand dug piers should neglect the top 2 feet of pier embedment when calculating passive resistance.

Site soils disturbed during the demolition of the existing improvements should be moisture conditioned and redensified to at least 90 percent relative compaction.

The remodeled structures should include full gutters to collect and control roof runoff. The collected runoff should be conveyed to either the street storm drain system or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff should not be allowed to flow toward or over the top of the coastal bluff.

The accompanying report presents our conclusions and recommendations, as well as the results of the geotechnical investigation on which they are based.

If you have any questions concerning the data or conclusions presented in this report, please call our office.

Respectfully submitted,

**HARO, KASUNICH & ASSOCIATES, INC.**



A handwritten signature in black ink, appearing to read "Rick L. Parks".

Rick L. Parks, GE 2603  
Senior Geotechnical Engineer

RLP/sr

Copies: 4 to Addressee

1 to Jonna Alexander Green (pdf only: [jonnaalexandergreen@gmail.com](mailto:jonnaalexandergreen@gmail.com))

1 to Kate Courteau (pdf only: [katecourteau@gmail.com](mailto:katecourteau@gmail.com))



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## GEOTECHNICAL INVESTIGATION

### Introduction

This report presents the results of our Geotechnical Investigation for the design and construction of new foundation elements to accommodate the remodel of the existing main residence and guest house at 1307 West Cliff Drive in Santa Cruz, California; see the Site Vicinity Map, Figure 1 in the Appendix of this report.

Our Aerial Photo Site Plan with boring locations is based on a Google Earth image and shows the physical setting image of the project site; see Figure 2 in the Appendix of this report.

### Purpose and Scope

The purpose of our investigation was to explore and evaluate surface and subsurface soil conditions at the site, and to provide geotechnical criteria for design and construction of new foundation elements for the proposed project. The specific scope of our services was as follows:

1. Review the data in our files pertinent to the site.
2. USA locates and exploration of the subsurface conditions at the site with two exploratory borings to depths of 13.5 feet below existing yard grade utilizing a limited access drill rig with a sampling tripod.
3. Test selected soil samples to determine their pertinent engineering properties.
4. Analyze the field and laboratory data to develop recommendations for new foundations elements and general site improvements.
5. Present the results of our investigation in a report.

### Site Description

The project site is located at 1307 West Cliff Drive residence in Santa Cruz, California.



Our Aerial Photo Site Plan with boring locations is based on a Google Earth image and shows the physical setting of the project site; see Figure 2 in the Appendix of this report.

The main residence and guest house are situated at the top of a coastal bluff on the seaward side of West Cliff Drive. The coastal bluff consists of a soil mantle approximately 10 feet thick overlying sandstone/siltstone bedrock. The bedrock is subject to wave action erosion. The bluff top yard area on the seaward side of the main residence and guest house is near level to gently sloping to the top or edge of the bluff. Below the top of the bluff, the 10 feet thick soil mantle slopes moderately steep to steeply to the bedrock contact.

The bedrock beach platform along the downcoast half of the parcel is relatively erosion resistant and has formed a headland extending seaward. As determined from the 1972 Californiacoastline.org aerial photograph of the project site, wave action erosion has formed a cusp shaped, shallow seacave/wave cut notch along the upcoast portion of the project parcel shoreline. A quarystone or riprap revetment was placed along the upcoast portion of the parcel shoreline sometime after 1972 to mitigate wave erosion. A stone filled, steel mesh, gabion basket type retaining wall system has been constructed above the quarystone revetment to stabilize the easily eroded soil mantle. Based on our November 2014 site reconnaissance, it appears the quarystones have settled and the revetment has slumped seaward of the toe of the gabion baskets. The steel mesh of the gabion baskets shows signs of corrosion. An engineering evaluation of the existing quarystone revetment and the gabion baskets retaining wall shoreline protection system at the project site with recommendations for maintenance was beyond the scope of this report.

### **Project Description**

We understand the main residence and guest house will be remodeled. Project plans were not yet been completed at the date of this report. We understand the proposed

remodel of the main house and guest house may generate new foundation loads which will need to be carried by either the existing foundations or new foundation elements.

Based on the difficulty involved in determining the structural integrity and bearing capacities of the existing foundation systems of the 50+ year old structures at the project site, we recommend all new foundation loads be supported by new foundation elements.

Either conventional spread or strip footings, isolated pedestal footings or drilled/hand dug piers may be used to support new foundation loads at the project site. Conventional spread footings and isolated pedestal footings should be embedded a minimum of 24 inches below adjacent grade and bear upon the dense cemented sands encountered in our borings. Design of drilled or hand dug piers should neglect the top 2 feet of pier embedment when calculating passive resistance.

Site soils disturbed during the demolition of the existing improvements should be moisture conditioned and redensified to at least 90 percent relative compaction.

The remodeled structures should include full gutters to collect and control roof runoff. The collected runoff should be conveyed to either the street storm drain system or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff should not be allowed to flow toward or over the top of the coastal bluff.

### **Field Exploration**

Subsurface conditions were investigated on 4 November 2014. The approximate locations of the test borings are indicated on the Aerial Photo Site Plan, Figure 2, in the Appendix of this report. The boring was advanced with 3.5-inch diameter continuous flight-auger equipment powered by a limited access drill rig.



Representative soil samples were obtained from the exploratory borings at selected depths or at major strata changes. These samples were recovered using the Standard Terzaghi Sampler (T).

The penetration resistance blow counts noted on the boring logs were obtained as the sampler was dynamically driven into the in situ soil. The process was facilitated using a tripod with a gasoline engine powered cathead to raise and drop a 140-pound hammer a 30-inch free fall distance and driving the sampler 6 to 18 inches and recording the number of blows for each 6-inch penetration interval. The blows recorded on the boring logs represent the accumulated number of blows that were required to drive the last 12 inches.

The soils encountered in the borings were continuously logged in the field and described in accordance with the Unified Soil Classification System (ASTM D2486). The Logs of the Test Borings are included as Figures 3 and 4 in Appendix of this report. The Boring Logs denote subsurface conditions at the locations and time observed, and it is not warranted that they are representative of subsurface conditions at other locations or times.

### **Laboratory Testing**

The laboratory testing program was directed toward determining pertinent engineering and index soil properties.

The natural moisture contents were determined on selected samples and are recorded on the boring logs at the appropriate depths.

The strength parameters of the underlying earth materials were determined from field test values derived from Standard Penetration Testing resistance of the in situ soils at the two boring locations.

The results of the field and laboratory testing appear on the "Logs of Test Borings" opposite the sample tested.

### **Subsurface Conditions**

At both boring locations we found loose clayey, silty sands to approximately 2 feet below surface grades. Dense, cemented silted sands were found at 2 feet to approximately 5 feet. Medium dense silty sands were found to about 10 below yard grade where medium dense, weathered sandstone bedrock was encountered. Competent, dense to very dense bedrock was found at 12 feet below yard grade.

The site soils are mapped as Quaternary Coastal Terrace Deposits overlying Pliocene Purisima Formation Sandstone (Geologic Map of Santa Cruz County – Brabb 1989).

### **Groundwater**

During our November 2013 subsurface exploration, we did not encounter groundwater in either of our two borings.

### **Regional Seismic Setting**

California contains a broad system of strike-slip faults. Some of these faults have the potential to present a seismic hazard to the project site. The most important of these are the San Andreas, San Gregorio and Zayante Faults. These faults are either active or considered potentially active (Working Group on Northern California Earthquake Potential [WGNCEP] 1996).

### **San Andreas Fault**

The proposed project lies approximately 13 miles southwest of the San Andreas Fault zone. This is a major fault zone of active displacement which extends from the Gulf of California to the vicinity of Point Arena, where the fault leaves the California coastline. Between these points, the fault is about 700 miles long. The fault zone is a break or series of breaks along the earth's crust, where shearing movement has taken place.



This fault movement is primarily horizontal. The largest historic earthquake in Northern California occurred along the San Andreas Fault on 18 April 1906 (M8.3+). The second largest earthquake last century, the 17 October 1989 Loma Prieta earthquake occurred along the Santa Cruz Mountain segment of the San Andreas Fault system.

Although it is uncertain whether the Santa Cruz Mountains segment has a characteristic earthquake independent of great San Andreas Fault earthquakes, the WGNCEP (1996) assumed an "idealized" earthquake of  $M_w$  7.0 with the same right-lateral slip as the 1989 Loma Prieta earthquake, but having an independent segment recurrence interval of 138 years and a multi-segment recurrence interval of 400 years.

### **Zayante Fault**

The Zayante Fault lies west of the San Andreas Fault and trends about 50 miles northwest from the Watsonville lowlands into the Santa Cruz Mountains.

The Zayante Fault zone is situated approximately 10 miles north of the project site and should be considered potentially active. The WGNCEP (1996) considers it capable of generating a  $M_w$  6.8 earthquake with an effective recurrence interval of 8,800 years.

### **San Gregorio Fault**

The San Gregorio fault zone lies about 10 miles southwest of the project site and skirts the coastline of Santa Cruz County northward from Monterey Bay and trends onshore at Point Año Nuevo.

The WGNCEP (1996) divided the San Gregorio fault into the "San Gregorio" and "San Gregorio, Sur Region" segments. The segmentation boundary is located west of Monterey Bay. The San Gregorio segment is assigned a slip rate producing a  $M_w$  7.3 earthquake with a recurrence interval of 400 years.

## **Historical Seismicity**

The epicenter of the 17 October 1989 Loma Prieta earthquake is located approximately 11 miles northeast of the project site. Experience following the 17 October 1989 Loma Prieta earthquake indicates that the quality of construction is a primary factor affecting the amount of earthquake damage sustained by structures. Most of the structural damage from the Loma Prieta earthquake was sustained where the foundations were not adequately embedded into firm materials, where the structures were not well braced for lateral shear and/or where the structures were not securely tied to the foundation system. Conversely, where structures were supported on foundations embedded into firm material, well braced for lateral shear and securely tied to the foundation, damage was generally minor even in areas quite close to the epicenter where structures sustained very strong to severe ground shaking. Based on these considerations, the risk of substantial structural damage from earthquakes appears relatively low for well built structures which incorporate lateral shear bracing and modern building code requirements into their design and construction.

## **Geologic Hazards**

### **Liquefaction**

During an earthquake, seismic waves travel through the earth and vibrate the ground. In cohesionless, granular materials having low relative density (loose to medium dense sands for example), this vibration can disturb the particle framework leading to increased compaction of the material and reduction of pore space between the framework grains. If the sediment is saturated, water occupying the pore spaces resists this compaction and exerts pore pressure that reduces the contact stress between the sediment grains. With continued shaking, transfer of intergranular stress to pore water can generate pore pressures great enough to cause the sediment to lose its strength and change from a solid state to a liquefied state. This mechanical transformation termed liquefaction can cause various kinds of ground failure at or near the ground surface.



The liquefaction process typically occurs at depths less than 50 feet below the ground surface. Liquefaction can occur at deeper intervals, given the right conditions, however ground manifestations have been found to be relatively minor.

Based on the blows per foot of sampler penetration within the project site soil mantle and lack of groundwater at our drill rig boring locations, there is a very low potential for liquefaction to occur at the project site.

### **Coastal Erosion**

The main residence and guest house are situated at the top of a coastal bluff on the seaward side of West Cliff Drive. The coastal bluff consists of a soil mantle approximately 10 feet thick overlying sandstone/siltstone bedrock. The bedrock is subject to wave action erosion. The bluff top yard area on the seaward side of the main residence and guest house is near level to gently sloping to the top or edge of the bluff. Below the top of the bluff, the 10 feet thick soil mantle slopes moderately steep to steeply to the bedrock contact.

The bedrock beach platform along the downcoast half of the parcel is relatively erosion resistant and has formed a headland extending seaward. As determined from the 1972 Californiacoastline.org aerial photograph of the project site, wave action erosion has formed a cusp shaped, shallow seacave/wave cut notch along the upcoast portion of the project parcel shoreline. A quarystone or riprap revetment was placed along the upcoast portion of the parcel shoreline sometime after 1972 to mitigate wave erosion. A stone filled, steel mesh, gabion basket type retaining wall system has been constructed above the quarystone revetment to stabilize the easily eroded soil mantle. Based on our November 2014 site reconnaissance, it appears the quarystones have settled and the revetment has slumped seaward of the toe of the gabion baskets. The steel mesh of the gabion baskets shows signs of corrosion. An engineering evaluation of the existing quarystone revetment and the gabion baskets retaining wall shoreline

protection system at the project site with recommendations for maintenance was beyond the scope of this report.

The revetment and blufftop retaining will need to be maintained over time to mitigate coastal erosion. Due to ongoing coastal processes the revetment and bluff top retaining wall may also need to be extended laterally as property lines allow to maintain the existing configuration of the blufftop yard area. Sea level rise will increase coastal erosion and wave runup at the project site as well as exacerbate the need to monitor and maintain the project site shoreline protection system.

### **Surface Displacement**

The potential for surface displacement at the project site due to either earthquake fault rupture or liquefaction lateral spreading is very low.

### **Building Codes and Site Class**

Project design and construction should conform to the following current building codes:

- 2013 California Building Code (CBC); and
- 2013 Green Building Standards Code (CALGreen).

In accordance with Section 1613.3.2 of the 2013 CBC, the project site should be designed using the Site Class D



## DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

The primary geotechnical considerations for the design and construction of the new foundation elements at the remodeled structures will be embedment of the new foundation elements below 2 feet from existing grade, mitigating severe seismic shaking, and controlling site drainage.

Either conventional spread or strip footings, isolated pedestal footings or drilled/hand dug piers may be used to support new foundation loads at the project site. Conventional spread footings and isolated pedestal footings should be embedded a minimum of 24 inches below adjacent grade and bear upon the dense cemented sands encountered in our borings. Design of drilled or hand dug piers should neglect the top 2 feet of pier embedment when calculating passive resistance.

Site soils disturbed during the demolition of the existing improvements should be moisture conditioned and redensified to at least 90 percent relative compaction.

The remodeled structures should include full gutters to collect and control roof runoff. The collected runoff should be conveyed to either the street storm drain system or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff should not be allowed to flow toward or over the top of the coastal bluff.

The following recommendations should be used as guidelines for preparing project plans and specifications:

### **Site Grading**

1. The geotechnical engineer should be notified **at least four (4) working days** prior to any site clearing or grading so that the work in the field can be coordinated with the grading contractor and arrangements for testing and observation can be made. The recommendations of this report are based on the assumption that the geotechnical

engineer will perform the required testing and observation during grading and construction. It is the owner's responsibility to make the necessary arrangements for these required services.

2. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557- current.

3. Areas to be graded should be cleared of all obstructions including loose fill, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill.

4. Cleared areas should then be stripped of organic-laden topsoil. Stripping depth should be from 2 to 4 inches. Actual depth of stripping should be determined in the field by the geotechnical engineer. Strippings should be wasted off-site or stockpiled for use in landscaped areas if desired.

5. Areas to receive non-expansive engineered fill should be scarified to a depth of 8 inches, moisture conditioned, and compacted to least 90 percent relative compaction. Portions of the site may need to be moisture conditioned to achieve suitable moisture content for compaction. These areas may then be brought to design grade with engineered fill.

6. Engineered fill should be placed in thin lifts not exceeding 8 inches in loose thickness; moisture conditioned, and compacted to at least 90 percent relative compaction.

7. If project site grading is performed during or shortly after the rainy season, the grading contractor may encounter compaction difficulty, such as pumping or bringing free water to the surface, in the upper surface fine grain soils. If compaction cannot be achieved after adjusting the soil moisture content, it may be necessary to over-excavate



the subgrade soil and replace it with angular crushed rock to stabilize the subgrade. We estimate that the depth of over-excavation would be approximately 12 to 24 inches under these adverse conditions.

8. Import soils utilized as engineered fill at the project site should:
  - 1) Be free of wood, organic debris and other deleterious materials;
  - 2) Not contain rocks or clods greater than 5 inches in any dimension;
  - 3) Not contain more than 25 percent of fines passing the #200 sieve;
  - 4) Have a Sand Equivalent greater than 18;
  - 5) Have a Plasticity Index less than 15;
  - 6) Have an R-Value of not less than 30; and
  - 7) Be approved by the project geotechnical engineer. Contractor should submit to the geotechnical engineer samples of import material or utility trench backfill for compliance testing a minimum of 4 days before it is delivered.
9. No permanent cut and fill slopes are anticipated for this project.
10. Following grading, all exposed slopes should be planted as soon as possible with erosion-resistant vegetation.
11. After the earthwork operations have been completed and the geotechnical engineer has finished his observation of the work, no further earthwork operations shall be performed except with the approval of and under the observation of the geotechnical engineer.

#### **Foundations**

12. Either conventional spread or strip footings, isolated pedestal footings or drilled/hand dug piers may be used to support new foundation loads at the project site.

Design of drilled or hang dug piers should neglect the top 2 feet of pier embedment when calculating passive resistance.

### **Conventional Spread Footings**

13. Conventional spread footings and isolated pedestal footings should be embedded a minimum of 24 inches below adjacent grade and bear upon the dense cemented sands encountered in our borings.

14. Conventional spread footings embedded at least 24 inches below the lowest adjacent grade may be designed for an allowable bearing capacity of 2,500 psf plus one-third to include short-term seismic and wind loads.

15. The foundation trenches should be kept moist and be thoroughly cleaned of all slough or loose materials prior to pouring concrete. In addition, all footings located adjacent to other footings or utility trenches should have their bearing surfaces founded below an imaginary 2:1 plane projected upward from the bottom edge of the adjacent footings or utility trenches.

16. Lateral load resistance for structures supported on footings may be developed in friction between the foundation bottom and the supporting subgrade. A friction coefficient of 0.35 is considered applicable.

17. Total and differential settlements under the proposed light building loads are anticipated to be less than 1 inch and 0.5 inch respectively.

18. Prior to placing reinforcing steel and concrete, all footing excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing reinforcing steel and concrete in order to confirm the foundation elements are supported by the underlying medium dense sands.



### **Drilled or Hand Dug Piers**

19. Drilled or hand dug piers may be used as an alternative foundation system to support the new foundation loads and provide lateral resistance for new structural elements. Piers placed should be embedded a minimum of 5 feet below grade. The top 2 feet of pier embedment should be neglected or treated as a neutral earth pressure zone when calculating passive resistance.

20. Piers designed for both lateral resistance and vertical bearing should be embedded at least 5 feet below existing grades for an allowable vertical or end bearing capacity of 4,000 psf plus a one third increase for short term loading may be used the pier design. Vertical bearing capacity may be increased by 500 psf plus a one third increase for short term loading per foot of embedment below 5 feet.

21. A passive pressure of 375 psf acting on two and a half (2.5) pier diameters may be utilized at 2 feet below grade. The top 2 feet of pier embedment should be treated as a neutral zone with neither active nor passive earth pressures.

22. Total and differential settlements under the proposed light building loads are anticipated to be less than 1 inch and 0.5 inch respectively.

23. Prior to placing reinforcing steel and concrete, all pier excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing reinforcing steel and concrete in order to confirm the foundation elements are supported by the underlying medium dense sands.

### **Concrete Slabs-on-Grade**

24. Building floor slabs-on-grade and exterior slabs should be constructed on properly moisture conditioned and compacted soil subgrades. Interior and exterior slabs-on-grade, not supporting vehicle loads, should bear upon at least 6 inches of non-

expansive engineered fill compacted to at least 90 percent relative compaction for consistent bearing.

25. The project design professionals should determine the appropriate slab reinforcing and thickness, in accordance with the anticipated use and loading of the slab. However, we recommend that consideration be given to a minimum slab thickness of 5 inches and steel reinforcement necessary to address temperature and shrinkage considerations. It is recommended that rebar in lieu of wire mesh be used for slab reinforcement. The steel reinforcement should be held firmly in the vertical center of the slab during placement and finishing of the concrete with pre-cast concrete dobies.

26. Where floor dampness must be minimized or where floor coverings will be installed, concrete slabs-on-grade should be constructed on a capillary break layer as follows:

- The capillary break at least 6 inches thick and covered with a membrane vapor retarder. The capillary break thickness may be reduced to 4 inches provided a geotextile fabric such as Mirafi FW402 is used to separate the capillary break gravels from the supporting soil subgrade;
- Capillary break material should be free-draining, clean, angular gravel such as 3/4-inch drain rock. The capillary break gravels should mechanically rolled or compacted for consistent slab support. The capillary break gravels should be washed to remove fines and dust prior to placement on the slab subgrade;
- The vapor retarder should be a high quality membrane at least 10 mil thick and puncture resistant. The concrete may be poured directly upon the vapor retarder. The primary considerations for installing the vapor retarder are: taping all seams; sealing all penetrations such as pipe, ducting, wire, etc; and repairing all punctures; and
- For best performance to reduce the potential for moisture intrusion into the new residence additions, the bottom of the capillary break should be placed above adjacent near level grades where storm water runoff ponding may occur.



27. It should be clearly understood concrete slabs are not waterproof, nor are they vapor-proof. The aforementioned moisture retardant system will help to minimize water and water vapor transmission through the slab; however moisture sensitive floor coverings require additional protective measures. Floor coverings must be installed according to the manufacturer's specifications, including appropriate waterproofing applications and/or any recommended slab and/or subgrade preparation. Consideration should also be given to recommending a topical waterproofing application over the slab.

28. In general, exterior slab-on-grade reinforcement should not be tied to the building foundations. At the discretion of the project structural engineer, exterior slabs at emergency egress areas may be tied to the perimeter foundation. Exterior slabs can be expected to suffer some cracking and movement. However, thickened exterior edges, a well-prepared subgrade including pre-moistening prior to pouring concrete, adequately spaced expansion joints and good workmanship should minimize cracking and movement.

#### **Site Drainage**

29. Thorough control of runoff is essential to the performance of the project.

30. Surface drainage should include provisions for positive gradients so that surface runoff is not permitted to pond adjacent site improvements.

31. The remodeled structures should include full gutters to collect and control roof runoff. The collected runoff should be conveyed to either the street storm drain system or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff should not be allowed to flow toward or over the top of the coastal bluff.

32. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

**Plan Review, Construction Observation, and Testing**

33. Our firm should be provided the opportunity for a general review of the final project plans prior to construction so that our geotechnical recommendations may be properly interpreted and implemented. If our firm is not accorded the opportunity of making the recommended review, we can assume no responsibility for misinterpretation of our recommendations. We recommend that our office review the project plans prior to submittal to public agencies, to expedite project review. The recommendations presented in this report require our review of final plans and specifications prior to construction and upon our observation and, where necessary, testing of the earthwork and foundation excavations. Observation of grading and foundation excavations allows anticipated soil conditions to be correlated to those actually encountered in the field during construction.



## LIMITATIONS AND UNIFORMITY OF CONDITIONS

1. The recommendations of this report are based upon the assumption that the soil conditions do not deviate from those disclosed in the borings. If any variations or undesirable conditions are encountered during construction, or if the proposed construction will differ from that planned at the time, our firm should be notified so that supplemental recommendations can be given.
2. This report is issued with the understanding that it is the responsibility of the owner, or his representative, to ensure that the information and recommendations contained herein are called to the attention of the Architects and Engineers for the project and incorporated into the plans, and that the necessary steps are taken to ensure that the Contractors and Subcontractors carry out such recommendations in the field. The conclusions and recommendations contained herein are professional opinions derived in accordance with current standards of professional practice. No other warranty expressed or implied is made.
3. The findings of this report are valid as of the present date. However, changes in the conditions of a property can occur with the passage of time, whether they be due to natural processes or to the works of man, on this or adjacent properties. In addition, changes in applicable or appropriate standards occur whether they result from legislation or the broadening of knowledge. Accordingly, the findings of this report may be invalidated, wholly or partially, by changes outside our control. Therefore, this report should not be relied upon after a period of three years without being reviewed by a geotechnical engineer.

## **APPENDIX A**

**Site Vicinity Map (Figure 1)**

**Aerial Photo Site Plan (Figure 2)**

**Logs of Test Borings (Figures 3 and 4)**





**SITE LOCATION**



#### SITE VICINITY MAP

APN 003-284-05  
1307 West Cliff Drive  
Santa Cruz, California

#### FROM:

USGS Santa Cruz Topographic Quadrangle, 1954, revised 1994.  
20 ft. contour interval

SCALE 1:24,000 (1" = 2,000')

DRAWN BY: JD

DATE: December 2014

REVISED:

JOB NO. SC10766

#### HARO, KASUNICH & ASSOCIATES, INC.

GEOTECHNICAL AND COASTAL ENGINEERS  
116 E. LAKE AVENUE, WATSONVILLE, CA 95076  
(831) 722-4176

FIGURE NO. 1

A-3-STC-16-0016





KEY:



= SOIL BORING LOCATION

**AERIAL PHOTO SITE PLAN**

APN 003-284-05  
1307 West Cliff Drive  
Santa Cruz, California

SCALE: NO SCALE

aerial photo from Google Earth, dated 23 Feb. 2014

PHOTOS BY: JD

DATE: December 2014

REVISED:

JOB NO. SC10766

**HARO, KASUNICH & ASSOCIATES, INC.**

GEOTECHNICAL AND COASTAL ENGINEERS

116 E. LAKE AVENUE, WATSONVILLE, CA 95076

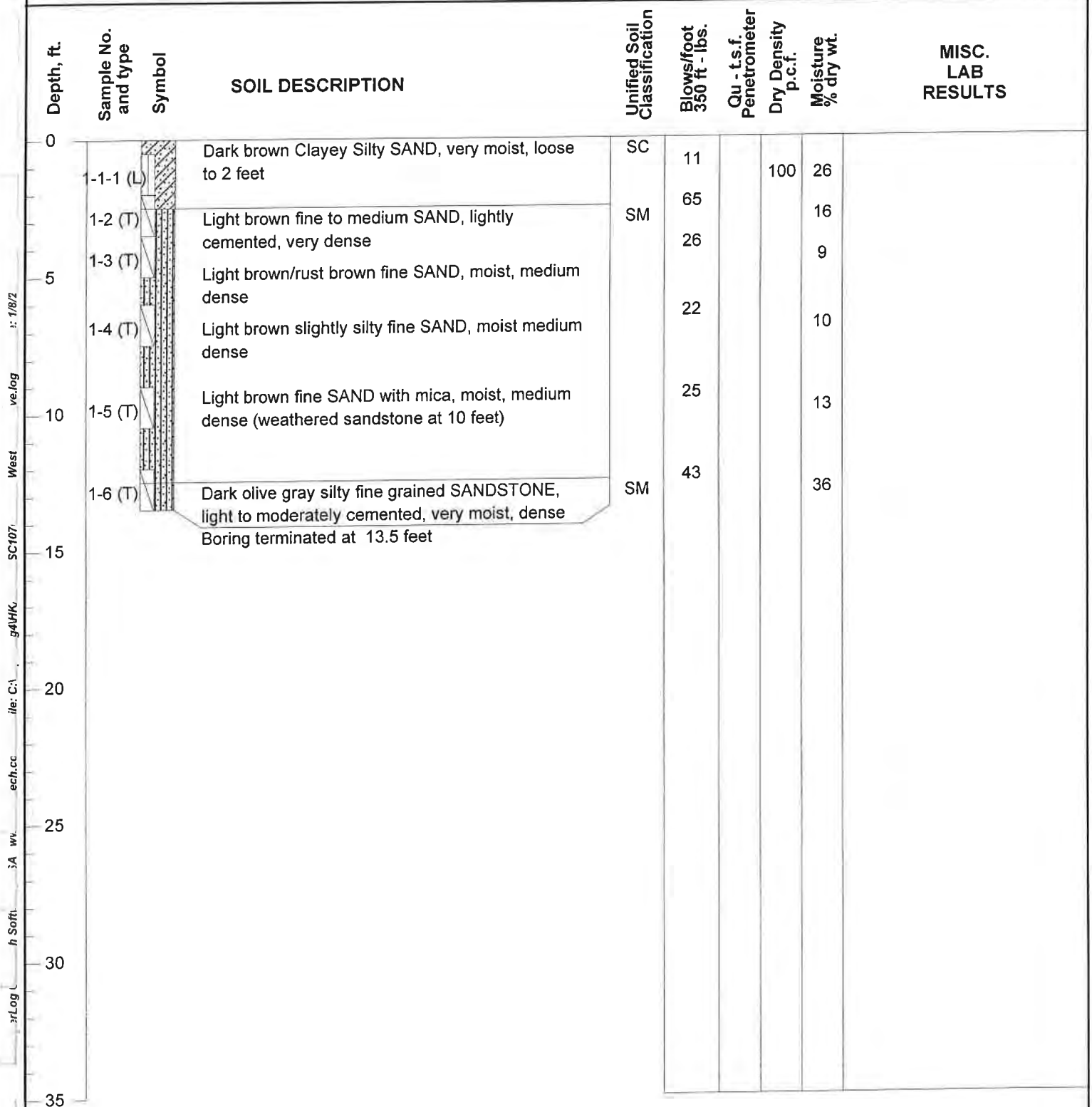
(831) 722-4175

**FIGURE NO. 2**

**A-3-STC-16-0016**



LOGGED BY RLP DATE DRILLED 11-4-14 BORING DIAMETER 4"MM BORING NO. B-1



**HARO, KASUNICH AND ASSOCIATES, INC.**

BY: sr

FIGURE NO. 3

22

LOGGED BY RLP DATE DRILLED 11-4-14 BORING DIAMETER 4" SS BORING NO. B-2

Depth, ft.	Sample No. and type	Symbol	SOIL DESCRIPTION	Unified Soil Classification	Blows/foot 350 ft - lbs.	Qu - t.s.f. Penetrometer	Dry Density p.c.f.	Moisture % dry wt.	MISC. LAB RESULTS
0			Dark brown Clayey SAND, non-plastic, moist, loose to 2 feet	SC	13				
2-2-1 (L)			Light brown silty medium Silty SAND with light cementation, moist, dense	SM	35		102	20	
2-2 (T)			Light brown/rust colored silty fine SAND, moist, medium dense, minimal cementation					10	
5			Light brown SAND with cementation to 7 feet		22			7	
2-3 (T)			Light brown silty fine SAND below with no cementation						
10	2-4 (T)		Light brown Silty SAND with mica, moist, medium dense (weathered sandstone at 10 feet)		21			12	
2-5 (T)			Dark olive brown silty SANDSTONE, moist, very dense, light to moderate cementation	SM	50/6"				
15			Boring terminated at 13.5 feet						
20									
25									
30									
35									

**HARO, KASUNICH AND ASSOCIATES, INC.**

BY: **sr**

**FIGURE NO. 4**





May 1, 2015

Planning and Community Development  
809 Center Street  
Santa Cruz, CA 95060

RE: 1307 West Cliff Drive Structural Repair

Dear Eric Simonson,

Endrestudio has reviewed the existing house and detached cottage at 1307 West Cliff Drive for seismic safety. Based on a walkthrough of the house with the Dean Jones of the Building Department, Jonna Alexander Green and Kate Courteau Architects, and Deidre Hamilton of Hamilton Swift and Associates on March 12, 2015, and based on calculations by Endrestudio, existing conditions were observed and necessary repairs were discussed to improve the seismic safety of the existing house and cottage. In addition, the geotechnical report by Haro, Kasunich and Associates, Inc dated January 8<sup>th</sup>, 2015 was reviewed. This letter summarizes the findings and recommendations discussed in the meeting.

The condition of the spread footings in the house are in need of repair. It appears that the footings are original, and as is typical with a house built in the 1940's, large cracks, foundation settlement and lack of rebar in the foundation necessitate the repair of the foundation for seismic safety. To repair the foundation, the house will have to be temporarily supported while the existing foundation is removed and a new foundation is placed under the house. In order for the existing floor joists to have proper clearance to the soil, the first level needs to be 6" higher than the current elevation. Dean Jones from the Building Department observed the existing conditions of the foundation on March 12, 2015 and agreed with these assessments and general method of repair.

The conditions of the cottage footings were also observed. It was determined that the footings appear to be concrete masonry units and deteriorating concrete slabs. There are large cracks in the foundation (on the order of 1") which indicate large settlements. A new foundation under the cottage would be necessary to help improve seismic safety and prevent the house from sustaining structural damage during a code level earthquake.

According to the geotechnical report by Haro, Kasunich and Associates, Inc., recommended bearing of spread footings should be a minimum of 24" below the existing grade so that they bear on dense cemented sands found in the borings. The current footings are set approximately 9" to 12" below grade, and therefore do not meet the minimum depth specified by the geotechnical report. The geotechnical report notes that structural damage sustained to structures during the Loma Prieta earthquake in 1989 correlated with spread footings not adequately embedded into firm material. In addition, based on general observations from March 12, 2015 and based on general construction practice during the 1940's, the house is not adequately secured to the foundation system. This condition may result in structural damage during a code level earthquake.

Endrestudio has performed an analysis of the existing house and detached cottage for lateral loads. The house and cottage will perform poorly in a major seismic event due to the few shear walls in the house. It is unlikely from the date of the house and cottage that hold downs are present at the end of the walls. For seismic safety, Endrestudio would advise upgrading the seismic system while work is

being done on the foundation. This would entail new lateral elements to help improve the seismic performance of the house. Due to the inadequate shear walls on the rear façade, we recommend moment frames be used to provide necessary lateral restraint. Lateral elements include the vertical system as well as diaphragm transfer in the floors and roof to the vertical system. It is understood from the walk through of the house that the Building Department is in agreement with this assessment and recommendation. It is understood that the Building Department considers any seismic upgrades voluntary.

If you have any further questions or require additional information, please do not hesitate to contact us.

Sincerely,

Paul Endres, Principal  
paul@endrestudio.com

cc: Deidre Hamilton, Hamilton Swift and Associates, Kate Courteau and Jonna Alexander-Green, Architects



HONJO  
RESIDENCE

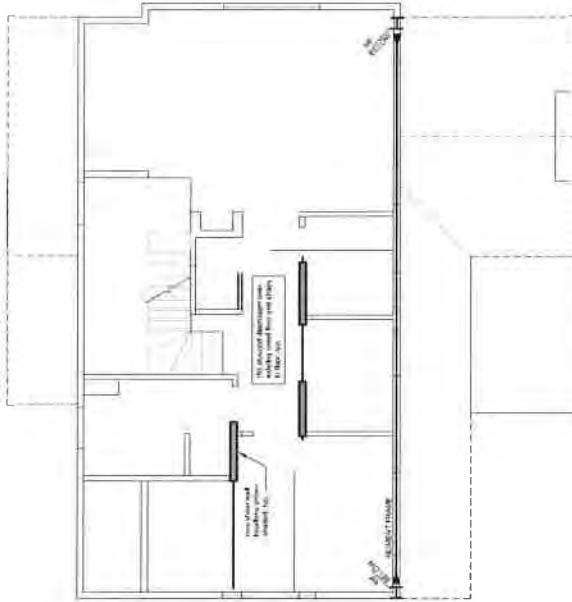
1307 W Cliff Drive  
Santa Cruz, CA  
95060

**ARCHITECT**  
Jenna Green and Kate Courteau

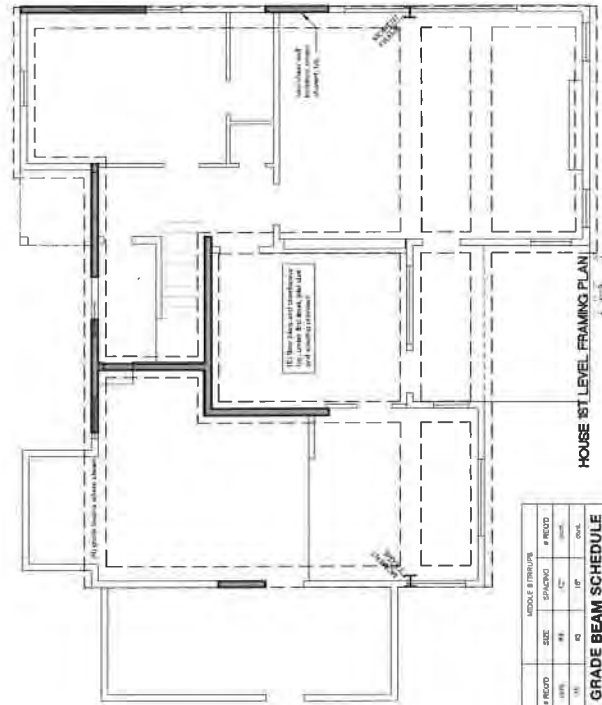
**STRUCTURAL ENGINEER**  
Endsall Studio  
4003 Hayden Bl #113  
Emeryville CA 94608  
p (510)798-6660

[illegible]

## SEISMIC SAFETY PLANS



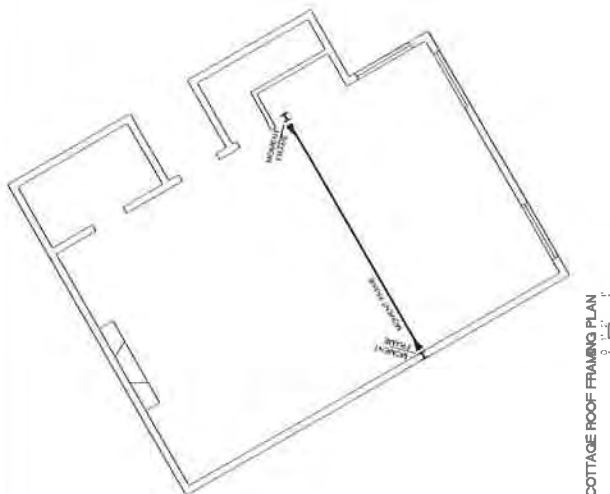
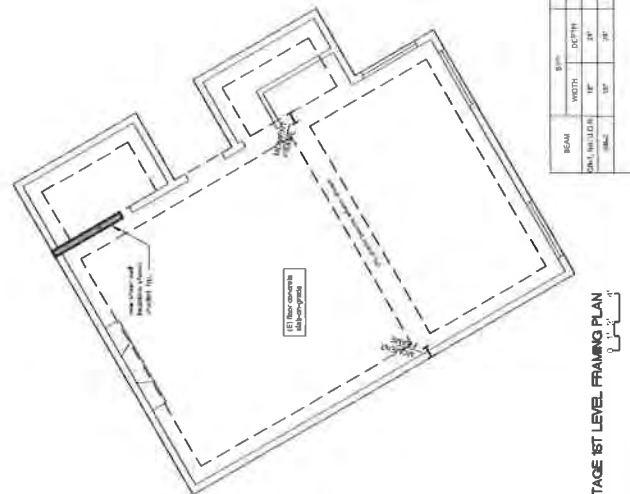
HOUSE 2ND LEVEL FRAMING PLAN



HOUSE 1ST LEVEL FRAMING PLAN

BEAM		S.F. IN		RE-IN-CONC'D		FAS II TRUSS		MODUL II TRUSS			
AN. HIN. L.O.G.	WIDTH	DEPTH	BOTTOM	TOP	WEIRWAY	SIZE	SPACING	#/FOOT	SIZE	SPACING	#/FOOT
10'-0"	10"	24"	11'-0"	10'-0"		4"	10"	10/10	4"	12"	10/10
10'-0"	10"	14"	11'-0"	11'-0"		3"	8"	10	3"	10"	10/10

GRADE BEAM SCHEDULE

COTTAGE ROOF FRAMING PLAN  
0 1' 2' 1"

COTTAGE 1ST LEVEL FRAMING PLAN

**Maureen Hamb- Certified Arborist WE2280**  
**Professional Consulting Services**

April 1, 2015

Jonna Alexander Green  
[jonnaalexandergreen@gmail.com](mailto:jonnaalexandergreen@gmail.com)  
[acker2wood@gmail.com](mailto:acker2wood@gmail.com)



Project: 1307 West Cliff Drive  
 Phase: Tree Assessment & Pruning Specifications

As requested, I have completed a visual assessment of two Monterey cypress (*Hesperocyparis macrocarpa*) and one eucalyptus (*Eucalyptus globulus*) growing on property at 1307 West Cliff Drive.

Tree health and structural stability have been analyzed along with the integrity of the growing site. Two of the trees are growing at the top of a coastal bluff that is subjected to coastal winds and ongoing erosion.

**Observations**

The property is a level site that is at the edge of a coastal bluff. A single family home and associated small accessory buildings are located on the site. A public roadway and pedestrian walkway/bike path border the property.

**Eucalyptus**

The eucalyptus tree is generally in good health with fair structure. The foliar canopy is full with good development and coloration. Large scaffold branching is concentrated on one side of the tree and extends over the bluff. This growth habit with weight concentrated over the bluff may cause excess stress on the supporting roots during times of high wind.



849 Almar Ave, Suite C #319  
 Santa Cruz, CA 95060  
 email: [maureenah@sbcglobal.net](mailto:maureenah@sbcglobal.net)

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 Fax: 831-763-7724  
 Mobile: 831-234-7735



Small to medium size dead branching is visible throughout the canopy. Several larger diameter branches are crossing and crowded near the center of the tree (at arrow).

The root crown (where the trunk meets the ground) was visually inspected. Several inches of soil was carefully removed to determine the presence of below soil defects or decay. No defects were observed at the root crown or under the surface soil.

The tree is growing at the base of a slight slope; the area is covered in ice plant growth to the edge of the bluff. The trunk emerges from the ground approximately 20 feet from the bluff edge.

The soils are soft and loose, the signs of soil erosion are visible starting at the edge of the existing driveway downslope to the base of the tree. It is likely the soil depth is thin on top of the rock layer that comprises the bluff; this is confirmed when the cliff face is viewed from offsite.

Although the tree appears to have a robust root system that is anchored in the growing site, the forces of erosion have degraded the area, washing away the thin layer of surface soil. It is very likely that the supporting roots (larger diameter woody roots) have spread into the fractured rocky layer. When flowing water enters the fractures within the rock it can loosen and enlarge the areas where roots have developed.

The ice plant under the canopy does not prevent erosion, it has developed as mat, but water can flow beneath the growth.

### **Eucalyptus Recommendations**

A long-term erosion control plan should be prepared and implemented by a qualified professional. This will aid in slowing or preventing the degradation of the growing site and possible destabilization of the tree. A plan that addresses the forces of erosion on top of the bluff may not prevent the continuing natural erosion of the exposed rocky face of the cliff.

If the ice plant is removed, it must be done carefully using manual labor. Erosion control plant material should be installed immediately after ice plant removal to protect the bare soil. Small container size plants are recommended. Larger containers can affect the growing site, as they require a much larger hole to accept the plant. Any irrigation that new plants may require must be a drip system.

Pruning specifications are attached with this document. They include the removal of dead branching, thinning of crowded or crossing branches and reduction of canopy weight over the bluff. No more than 15% of the live canopy will be removed.

### **Monterey Cypress on Bluff**

The mature cypress on the bluff is in fair to good health. The foliar canopy and branch structure are concentrated at the treetop.



Branching is long and extends in all directions from the center. The remnants of previous broken branching are visible in the canopy and on the ground.

The base of the tree is at the bottom of a small slope the trunk leans over the bluff, it emerges from the ground several feet from the edge. Roots are visible within the rock face of the cliff below.





As with the eucalyptus, the growing area is covered in ice plant and other vegetation. Structural roots were found near the soil surface as much as 25 feet upslope from the tree. The location and size of all structural roots cannot be accurately determined without excavating the site. Although there are methods available (AirSpade) that can remove the soil without damaging roots, I do not recommend any site disturbance. The removal of soil around the roots could degrade the site to the point that the tree could be destabilized.

The tree appears to be well rooted on the uphill side; the cliff side of the tree has very little area for anchoring. No indications of movement within the uphill growing site were found. No cracks or mounding was seen in the surrounding soil. As with the eucalyptus, roots have developed between spaces in the rock that will expand as the roots continue to develop.

#### **Bluff Cypress Recommendations**

As with the eucalyptus tree, I recommend instigating an erosion control plan developed by a qualified professional to limit the degradation of the growing site.

Monitoring the lean of the main trunk and condition of the growing site should be completed three to four times per year. Mounding or cracking within the surrounding soil can indicate movement within the root system, an increase in the lean of the main trunk could indicate destabilization. If these indications are observed the removal of the tree could be considered. If tree failure were to occur, a portion of the bluff could fail as well.

Pruning specifications for this tree are attached. The project will include the removal of dead and broken branching, reduction of branch length and consistent thinning of the canopy not to exceed 15% of live foliage.

#### **Monterey Cypress at Pedestrian/Bike Path**

This mature tree is growing at the edge of the asphalt pedestrian/bike path adjacent to West Cliff Drive. The buttress (base of the tree) has expanded beyond the property boundary and has lifted the pavement to a minor degree.

The tree is generally healthy with structural defects common to the species. Long branching is weighted at the ends. Small to medium sized branching has failed in the recent past. Crowded and crossing branches are visible throughout the canopy.



This tree is stable in the growing site, no degradation or erosion is occurring at the base of the tree or under the canopy. Extensive ice plant growth covers the area.

**Recommendations for Cypress at Pedestrian/Bike Path**

Pruning specifications for this tree are attached. The project will include the removal of dead branching, reduction of branch length and consistent thinning of the live canopy not to exceed 15%.

**Conclusion**

The tree trees evaluated on this site are generally healthy with minor to moderate structural defects. The stability of the eucalyptus and cypress were evaluated using visual assessment techniques. Erosion of the growing areas can be reduced with the implementation of a plan that prevents the loss of surface soil by strong winds, rain and runoff. The natural erosion of the bluff and cliff must be evaluated by a qualified professional. Root development within the rock just below the thin soil layer may be responsible for degrading the site.

The eucalyptus appears stable in the growing site with surface erosion being the most significant impact. Tree structure can be improved with pruning, which may also reduce the weight and balance of the canopy.

The cypress at the bluff edge appears stable at this point. Structural roots were found on the soil surface a distance from the trunk. The lean of the trunk along with indicators within the soil should be monitored for any changes that could be a sign of destabilization.

The branch structure of the cypress near the pedestrian/bike pathway can be improved with pruning to reduce branch length/weight and thinning.

Please call my office with any questions or additional concerns about the trees on this property.

Respectfully,

Maureen Hamb-Certified Arborist WE2280



**Maureen Hamb- Certified Arborist WE2280**  
**Professional Consulting Services**

**1307 West Cliff Drive**  
**Pruning Specifications**



All pruning will be performed by a licensed insured contractor with experience and a high degree of skill.

All pruning will adhere to the most current versions of the following industry guidelines:

- American National Standards Institute A300 for Tree Care Operations. Tree, Shrub and Other Woody Plant Maintenance-Standard Practices.
- International Society of Arboriculture: Best Management Practices

**Eucalyptus Pruning**

Remove dead branching greater than one inch in diameter  
Selectively prune crowded branching near the center of the canopy.  
Reduce length of branching extending over the bluff to appropriate sized lateral branches.  
Consistently thin entire canopy no more than 15%.

**Cypress on Bluff Pruning**

Remove dead or broken branching greater than one inch in diameter.  
Remove or reduce the length of crossing or crowded branching  
Reduce branch length where a lateral branch is available  
Consistently thin entire canopy by no more than 15%

**Pedestrian/Bike Path Cypress Pruning**

Remove dead or broken branching greater than two inches in diameter  
Remove or reduce the length of crossing or crowded branching  
Reduce branch length where a lateral branch is available  
Consistently thin entire canopy by no more than 15%

**849 Almar Ave. Suite C #319**  
**Santa Cruz, CA 95060**  
**email: [maureenah@sbcglobal.net](mailto:maureenah@sbcglobal.net)**

**Telephone: 831-763-6919**  
**Fax: 831-763-7724**  
**Mobile: 831-234-7735**

March 18, 2016

Shige and Amy Honjo  
 1307 West Cliff Drive  
 Santa Cruz, California 95060-6355

Subject: Architectural Response to Coastal Commission Appeal

Reference: Proposed Remodel of Existing Residences  
 1307 West Cliff Drive  
 APN 003-284-05  
 Santa Cruz, California  
 Appeal No. A-3-STG-16-0016

Dear Mr. and Mrs. Honjo:

This letter addresses the architectural aspects of the Appeal from Coastal Permit Decision of Local Government dated February 2nd 2016 regarding the proposed work at 1307 West Cliff Drive in the city of Santa Cruz, California.

We have been contracted as architectural designers by the owners to oversee maintenance and repair of the property at 1307 West Cliff Drive. Upon initial visits to the site it became clear that the property was in disrepair and had not received routine maintenance by its previous owners, who were letting it out as a vacation rental. We have been collaborating with a group of consultants (all represented in this appeal response) on how best to transform this poorly maintained property into a safe, comfortable and functional home for the owners. It is our intention to achieve this with as little disturbance to the site as necessary. In no case does the work we suggest intensify the use of the property. It will remain a single-family residence and has been reduced in size.

The real estate listing photos mentioned in the appeal are meant to sell someone a property and do not accurately depict the failings of this 78 year old property. The major faults we have uncovered are as follows and are discussed in further detail below:

1. STRUCTURAL failure in the foundation and lack of shear walls
2. failing or nonexistent WEATHERPROOFING leading to considerable air infiltration through existing siding
3. old failing WINDOWS + DOORS
4. dangerous ELECTRICAL wiring that does not meet code
5. faulty PLUMBING that does not meet code
6. the crawl space below the house is inaccessible and does not meet code
7. poor SITE DRAINAGE is contributing to erosion on the coastal bluff.
8. in addition to this building maintenance we'd like to improve the SECURITY + PRIVACY of the home which has been burglarized multiple times

#### STRUCTURAL:

There are large cracks in the foundations of both buildings. We approached the City of Santa Cruz who suggested we apply for a demolition permit which would allow their building inspector to come see the conditions first hand. On March 13th 2015 the City of Santa Cruz building inspector, Dean Jones, along with associate planner Nancy Conception visited the site to observe and confirm the poor state of the foundations of both buildings. Structural engineer Paul Endres also observed the conditions and made recommendations to replace both foundations and install shear walls and moment frames to get the home the lateral and vertical support it would need to withstand seismic forces to meet current code. We have found a way to keep more than half of the stud walls intact (see drawing sheet A2.0) as the buildings receive maintenance in the form of new foundations, shear walls and moment frames; all of which are required for a seismic retrofit which will bring the building up to code.



**STRUCTURAL (continued):**

The ocean facing south elevation has several walls not in line with each other in the north to south direction and offer no lateral support to each other so they are especially prone to failure in the event of an earthquake. The installation of a moment frame will create continuous lateral support and provide stability to the entire south wall. The east elevation of the house is also prone to failure where the east and west second story walls bear down on large picture windows below. This load must be transferred all the way down to the foundation. The new shear walls and moment frames will create "new structural loads" but they will be made to support existing framing conditions and meet current codes.

**WEATHERPROOFING:**

The main focus of our work on the exterior of the house is proper weatherproofing. The property is clad with wood siding and roofing. These materials are meant to have a life cycle use of roughly 50 years. Today they have served 78 years in very demanding conditions creating weatherproofing issues that have developed throughout both structures. This condition occurred as the wood material shrinks and swells in the ever changing hot and cool weather allowing for gaps to open up, leaving the house susceptible to water damage inside the wall. Additionally the interior is drafty with inefficient energy usage. The two buildings underwent a HERS (home energy rating) test by A Plus Green Energy Services that state:

"Both buildings show signs of excessive air infiltration at windows, doors and siding. California standards for infiltration are 5-7 ACH 50. Both structures are excessive at 2 to 4 times that rate respectively. Recommending replacement of windows and door. Removal of the existing siding. Seal all accessible penetrations. Installation of a proper air barrier and new siding."

We suggest a natural wood siding material that is not only long lasting but also won't harm the ocean with polluted runoff (which the existing applied finish does as it deteriorates). We propose a torched finish which increases the longevity of the material by making it more durable against the extreme weather conditions of the coastal zone.

Additionally we propose adding sheathing, building wrap and insulation to the walls for increased weather protection and energy efficiency. By choosing a natural material with a natural finish the intent is to let the buildings hide in the shadows of the large trees and meld with the native landscape, allowing appreciation of the natural landscape with less distraction from the built environment.

**WINDOWS + DOORS**

We suggest new double pane windows and doors. The existing windows have lost their weatherstripping. Further we suggest the removal of portions of the structure that are in disrepair or in need of major repairs; such as the dormers which are not properly flashed and allow water damage to occur on the roof framing and upstairs ceiling. Other removals include a leaky upstairs addition (see south elevation photo on page 1), a low clearance ground level shed (see main house shed photo), and a low clearance ground level bathroom that has a toilet blocking entrance. (see guest house bathroom photo). Both of these structures are so beyond proper repair it is advised to just remove the square footage, making the building footprint smaller.

**ELECTRICAL + PLUMBING:**

The electrical and plumbing have not been updated to meet code and have been repaired with disregard for code, therefore they are unsafe. We advise a full overhaul of both systems bringing them to meet current code standards. (see guest house bathroom and electric wiring photos)



South Elevation



East Elevation



Main House Shed



Guest House Bathroom

0'-10"  
clearance to  
access sink  
and shower,  
does not meet  
code.



Electric Wiring

**SITE DRAINAGE:**

The site has poor drainage which results in standing water underneath the house and elsewhere on the property. Rain water is permitted to flow over the edge of the bluff and erode the hillside and the base of both large trees. Working with soils engineers at Haro, Kasunich & Associates Inc., civil engineers at Bowman + Williams and landscape architects at Joni Janeki & Associates Inc., we have designed a new roof water shedding system and other storm water drainage solutions suggested by the civil engineers. The City of Santa Cruz Public Works has replaced the undersized storm drain that allowed erosion underneath the existing driveway. The owner has opted for fewer concrete decks, patios and walkways to help improve drainage on the site and make room for new native plants which will also help support the cliff against erosion and improve the habitat for endangered native bees and other wildlife.

**SECURITY + PRIVACY:**

For privacy and security we have suggested minor changes to the massing of the two buildings. The client would like to reinstate the original garage which was previously converted into a non-functional living space inside the main house. We suggest locating the new garage door on the west elevation, out of public view away from the public sidewalk so it could be safe to leave open and isn't an obvious and easy point of entry for criminals.

The client has opted to remove a large picture window facing the public sidewalk on the west side of the guest house. The invitation for break-in is very high at this window and its located so that it removes all privacy from the small guest space inside. By removing this window the occupants can still enjoy their views of the ocean, without the public enjoying views of them. (photo of window with sidewalk in foreground)

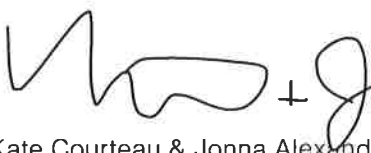
**ARCHITECTURAL STYLE:**

"Cotswold cottage" is not an accurate style reference for this property. The Cotswolds is region in England where many of the buildings were built in medieval times and made of local limestone with exposed interior structural timber, slate roof and small leaded windows.

Unlike the Cotswolds in England, the homes along West Cliff Drive are a unique expression of style. 1307 West Cliff Drive property is no different. This house is not considered historic, the city of Santa Cruz has evaluated hundreds of buildings in Santa Cruz for historic preservation classification and this property did not make the list. The style is not special and the construction technique is poor.

Please feel free to contact us with any questions regarding this letter or the architectural aspects of this project.

Respectfully submitted,



Kate Courteau & Jonna Alexander Green  
Architectural Designers



Driveway Erosion



West Cliff Drive Sidewalk



Cotswold Village





March 17, 2016

Shige and Amy Honjo  
1307 West Cliff Drive  
Santa Cruz, CA 95060-6355

**Subject:** Landscape Response to Coastal Commission Appeal

**Reference:** Proposed Landscape Site Plant  
1307 West Cliff Drive  
APN 003-284-05  
Santa Cruz, CA  
Appeal No. A-3-STC-16-0016

Dear Mr. and Mrs. Honjo,

This letter addresses the landscape and site design aspects of the Appeal from Coastal Permit Decision of Local Government dated February 2, 2016, regarding the proposed repair and maintenance of the existing landscape and site at 1307 West Cliff Drive in Santa Cruz, California.

Plans for site and landscape modifications fall within the city's ordinance which allows for "normal and routine maintenance or non-structural alternations... for the purpose of preserving the existing condition, retarding or eliminating wear and tear or physical depreciation." Each of the proposed site and landscape modifications will serve to stabilize the coastal bluff and minimize further erosion.

### **Plantings**

New native, coastal bluff, meadow plantings, with low water requirements, are planned to replace non-native ice plant, which currently dominates the undergrowth beneath the site's eucalyptus and cypress trees. As certified arborist, Maureen Hamb, notes in her tree report dated April 1, 2015, "The ice plant under the [eucalyptus and cypress] canopy does not prevent erosion, it has developed as [a] mat, but water can flow beneath the growth." Replacing ice plant with selected native and non-invasive coastal-adapted plants commonly used for erosion control will stabilize the coastal bluff and prevent further damage. Moreover, the removal and replanting outlined on the landscape site plan is consistent with the erosion control plan that Ms. Hamb recommends in her report.

515 SWIFT ST. SANTA CRUZ, CA 95060

PHONE 831.423.6040 | FAX 831.423.6054

EMAIL JLJ@JLJA.COM | WWW.JLJA.COM

California Landscape Architect License 3163

March 17, 2016

Ms. Hamb's report further details the existing conditions of the three heritage trees on site, including one eucalyptus and two Monterey cypress trees. While healthy, these trees are at risk due to soil erosion and excessive canopy weight. In the interest of the heritage trees' long-term health and stability, the landscape site plan retains the three trees, includes appropriate soil stabilization measures, and promotes the pruning and maintenance regime outlined in the tree report and accompanying pruning specifications document.

**Retaining Wall at Driveway**

The new retaining wall with curb planned for the eastern edge of the existing driveway, which is to remain, will help prevent further erosion damage. As outlined in the geotechnical investigations, significant erosion damage is already apparent in the disruption of the driveway pavers and in the 3-foot high scarp that has been eroded below the driveway. Reference Geotechnical Engineer Rick Parks' (Senior Geotechnical Engineer with Haro, Kasunich & Associates) Geotechnical Recommendations, dated August 26, 2015, and Mr. Parks' Geotechnical Response to Coastal Commission Appeal, dated February 14, 2016.

**Wood Deck**

A wood deck is planned to replace the existing concrete deck, which extends off the niche set within the southern façade of the home. The existing concrete deck will be demolished as part of constructing a new foundation, a requisite safety and stability measure per Mr. Parks' Geotechnical Recommendations. The landscape site plan proposes a replacement ipe wooden deck with boards set wide enough to accommodate sufficient drainage. This deck will have the added benefit of preventing surface runoff and further erosion, an improvement on the existing concrete deck.

Please feel free to contact me if you have any questions concerning this letter or the site and landscape aspects of the project.

Respectfully submitted,  
JONI L. JANECKI & ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Joni L. Janecki". The signature is fluid and cursive, with a large loop at the end.

Joni L. Janecki, ASLA  
President



**FILE COPY**

**PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT**  
 809 Center Street ~ Room 206 ~ Santa Cruz, CA 95060 ~ (831) 420-5100

**ZONING PERMIT**

PROJECT #: CP15-0157

OWNER: HONJO SHIGEFUMI & AMY  
 1307 W CLIFF DR  
 SANTA CRUZ CA 95060

APPLICANT: HAMILTON SWIFT AND ASSOCIATES  
 500 CHESTNUT STREET  
 SANTA CRUZ CA 95060

APN(s)/Address(es):

003-284-05/1307 WEST CLIFF DR

The following permit(s) was/were approved on 01/06/2016 by the Zoning Administrator and will be effective on 01/19/2016 unless appealed. If the final day for filing an appeal (ten calendar days following the approval date) occurs on a weekend day or holiday, the final filing date shall be extended to the following workday. If no appeal is filed, the effective date shall be the day after the final appeal filing date.

☒ Coastal Permit\*☒ Design PermitBy: 

Eric Marlatt, Zoning Administrator

This permit is issued to the owner of the property. In executing this permit, applicant/owner agrees to comply with all terms of permit(s), including conditions of approval, if any. Permit must be exercised within 36 months of date of issuance (above) unless otherwise indicated in conditions of approval. See reverse for information regarding appeals and property reassessment.

\* Coastal Permit - This Coastal Permit is appealable to the California Coastal Commission following appeal to the Planning Commission and City Council. Appeals must be filed within ten (10) working days after final action by City Council. There is no fee. Appeal forms are available in the Regional Office of the Coastal Commission 725 Front St, Suite 300, Santa Cruz CA 95060.

CC: County Assessor's Office  
 File  
 Coastal Commission

In accordance with Chapter 24.04 of the Santa Cruz Municipal Code, any interested person may appeal a final action of a hearing body or staff. Appeal of a decision of the City Planning Director or the Zoning Administrator must be made to the Planning Commission through the Planning Department. Appeals of a decision of the City Planning Commission or Historic Preservation Commission must be made to the City Council through the City Clerk. All appeals must be made in writing and state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be accompanied by the required appeal fee. \*\*Appeals must be received no later than ten (10) calendar days following the action from which the appeal is being taken. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

Whenever any permit is denied or withdrawn, no new application for the same or substantially the same project may be filed for a period of one year from the date of said denial or withdrawal. Where an application has been denied without prejudice, application for the same or substantially the same project may be filed within said period of one year.

In accordance with Section 65863.5 of the Government Code, a copy of this permit has been sent to the County Assessor. It is the Assessor's duty, under Section 402.2 of the Revenue and Taxation Code, to reassess the property to the extent permitted by law. If, after receiving your notice of assessment, your opinion of value differs from the Assessor's valuation, you have the right of protest and appeal. Contact the Assessor's Office immediately to discuss the valuation. If there is still a difference of opinion, you may request a hearing before the Assessment Appeals Board. Application for such hearing must be filed in writing with the Clerk of the County Board of Supervisors, County Courthouse, 701 Ocean St, Santa Cruz CA 95060, between July 2 and August 26 of each tax year.



**EXHIBIT "A"**

**CONDITIONS OF APPROVAL FOR THE PROJECT AT**

**1307 West Cliff Drive – Application No. CP14-0157**

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the OF-R/CZ-O/SP-O/WCD-O zone district.**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. This permit shall be exercised within three (3) years of the date of final approval or it shall become null and void.
4. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
5. All final working drawings shall be submitted to the Zoning Administrator for review and approval in conjunction with the building permit application. The plans submitted for building permits shall have the same level of articulation, detailing, and dimensionality as shown in the approved plans. All approved exterior finishes and materials shall be clearly notated on the building permit plans.
6. The applicant and contractor who obtains a building permit for the project shall be required to sign the following statement at the bottom of these conditions, which will become conditions of the building permit:

"I understand that the subject permit involves construction of a building (project) with an approved Design Permit. I intend to perform or supervise the performance of the work allowed by this permit in a manner which results in a finished building with the same level of detail, articulation, and dimensionality shown in the plans submitted for building permits. I hereby acknowledge that failure to construct the building as represented in the building permit plans, may result in delay of the inspections process and/or the mandatory reconstruction or alteration of any portion of the building that is not in substantial conformance with the approved plans, prior to continuation of inspections or the building final."

\_\_\_\_\_  
Signature of Building Contractor

\_\_\_\_\_  
Date

CONDITIONS OF APPROVAL  
For 1307 West Cliff Drive – CP14-0157

7. Except as modified by other conditions of approval, the development of the site shall be in substantial accordance with the approved plans prepared by Endres Studio Architecture Engineering (dated 9/4/15), and on file in the Department of Planning and Community Development of the City of Santa Cruz except as modified herein. All aspects of construction must be completed prior to occupancy. Major modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.
8. All requirements of the Building, Fire, Water, and Public Works Departments shall be completed prior to occupancy and continuously maintained thereafter.
9. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
10. All refuse and recycling activities during construction shall be done in accordance with Chapter 6.12 of the Santa Cruz Municipal Code. Be aware that private companies offering refuse or debris box services are not allowed to operate within the City limits, except under certain limited circumstances detailed in Chapter 6.12.160.
11. The final landscape plan shall be in substantial accordance with the approved plans submitted and on file in the Department of Planning and Community Development of the City of Santa Cruz.
12. All landscaping shall be installed prior to final utility release or issuance of occupancy permits.
13. Prior to site grading or any disturbance all trees and/or tree stands indicated for preservation in the approved plans shall be protected through fencing or other approved barricade. Such fencing shall protect vegetation during construction and shall be installed to the satisfaction of the Director of Planning and Community Development.
14. The applicant shall implement all recommendations presented in the *Tree Assessment & Pruning Specification* prepared by *Maureen Hamb- Certified Arborist* on April 1, 2015.
15. The applicant shall implement all recommendations presented in the *Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House 1307 West Cliff Drive (January 2015)* and the *Supplemental Geotechnical Recommendation for the Driveway Retaining Wall (September 4, 2015)* prepared by *Haro, Kasunich and Associates, Inc.*

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**CONDITIONS OF APPROVAL**  
**For 1307 West Cliff Drive – CP14-0157**

16. All new mechanical equipment and appurtenances, including gas and water meters, electrical boxes, roof vents, air conditioners, antennas, etc. visible from the public way and from adjacent properties, shall be screened with material compatible with the materials of the building and shall be subject to the approval of the Zoning Administrator.
17. Final colors shall be approved by the Zoning Administrator prior to application for building permits.



**Dept. of Planning and Community Development**  
809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## **Notification of Final Local Action on Coastal Permits**

**Date:** January 19, 2016

**To:** Attn: Ryan Moroney, Coastal Planner  
California Coastal Commission  
Central Coast District  
725 Front St., Ste 300  
Santa Cruz, CA 95060

**From:** City of Santa Cruz Planning Department

Please be advised of the following actions:

☒ **Zoning Administrator hearing of** January 6, 2016  
(Date)

☒ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case:

File No CP15-0157

Address: 1307 West Cliff Drive

☒ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ **Planning Commission hearing of** \_\_\_\_\_  
(date)

☐ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case numbers:

File No.: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ **City Council hearing of** \_\_\_\_\_  
(date)

☐ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case numbers:

File No.: \_\_\_\_\_

Address: \_\_\_\_\_

☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ This project is not appealable to the California Coastal Commission. Section 24.04186.

Action Agenda for coastal permits acted upon is attached.







## EXHIBIT "B"

### FINDINGS FOR APPROVAL FOR THE PROJECT ON PROPERTY AT

1307 West Cliff Dr.—Application #CP15-0157

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the OF-R/CZ-O/SP-O/WCD-O zone district.**

#### **FINDINGS**

##### **Coastal Permit, Section 24.08.250**

1. **Maintain views between the sea and the first public roadway parallel to the sea.**

The improvements to the residential structures will not affect coastal views as the location, massing, and volume of the structures will remain unchanged.

2. **Protect vegetation, natural habitats and natural resources consistent with the Local Coastal Land Use Plan.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

3. **Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan.**

The project site is within the West Cliff Drive Overlay zone. The standards include special requirements for calculating height, floor area ratio, setbacks, and landscaping. The project as proposed is consistent with the WCD development standards.

4. **Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.**

This project will not affect public access to the coast therefore, this finding is not applicable.

5. **Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate.**

This project will not affect visitor- serving needs therefore, this finding is not applicable.

- 6. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.**

This is a proposal to remodel an existing legal nonconforming single family dwelling; therefore this finding is not applicable.

**Shoreline Protection Overlay District, Section 24.10.2430**

- 7. The project protects trees and vegetation and sensitive wildlife habitat.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

- 8. The project is consistent with the following criteria for bluff or cliff development:**

- a. The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.**

The project involves the remodel of an existing legal nonconforming single-family house that has been located on the coastal bluff since 1940. The proposed improvements to the structure, including a new foundation and seismic system will assure stability and structural integrity of the home's expected economic life span and will not impact any natural land forms.

A geotechnical investigation prepared by Haro, Kasunich and Associates explored and evaluated the surface and subsurface soil conditions on the site, and provides geotechnical criteria for the design and construction of the new foundation elements for the proposed project. The new foundation elements are to be embedded two feet below existing grade to bear upon the dense cemented sands. The remodeled structure will also include full gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.



An approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing 1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

As part of the remodel, the applicant is proposing to replace the foundations that are failing as well as new lateral elements to help improve seismic performance. Deputy Building Official Eric Simonson inspected the structures and found that the foundations are failing due to the poor soils conditions that the original 1940s buildings are sitting on, as well as the lack of proper reinforcements in the concrete. He also reviewed the geotechnical investigation prepared by Haro, Kasunich and Associates and agreed with their recommendations. It is his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants.

- b. The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

- c. The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.**

The remodel of the existing legal nonconforming single-family house utilizes the existing footprint and will not alter the existing cliff or bluff top, therefore not interfering with sand movement.

- d. The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.**

An approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing

1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

The project proposes the installation of a small retaining wall along the outboard edge of the existing driveway. The driveway is currently being undermined by runoff from surface drainage due to a West Cliff Drive storm drain outlet that has frequently overflowed. In order to maintain the driveway and prevent further erosion, a soil pin wall has been designed and recommended by Haro, Kasunich and Associates Inc. A supplemental geotechnical report has been included as part of the submittal. No sea wall is proposed as part of this application.

- e. **The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing a full gutter system to collect and control roof runoff, directing it toward the street storm drain system.

Additionally, an approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing 1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

- 9. **The project provides maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title.**

The applicant will be required to provide erosion control measures with the building permit application materials. The remodeled structure will also include full gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

- 10. **The project maintains public view corridors between the sea and the first public roadway parallel to the sea and maintains natural views of the coastline.**

The improvements to the residential structures will not affect coastal views as the footprint, massing, and volume of the structures will remain unchanged.

- 11. The project protects paleontological resources as prescribed in the Land Use Plan.**

The site is not located within a mapped paleontological sensitive area.

- 12. The project is compatible with the established physical scale of the area.**

The project involves a remodel of an existing single-family house with no additions or increase in massing or volume. The 75 year old structure will remain compatible with the established physical scale of the area.

- 13. The project is consistent with the design review guidelines of this title and the policies of any applicable area plan.**

The property is located in the West Cliff Drive Overlay District which has specific regulations regarding building height, building envelope, setbacks, floor area ratio (FAR), parking, landscaping, and fencing. The project involves the remodel of an existing single-family house with no additions or increase in massing or volume; therefore with no expansion most of the regulations are not applicable for this project. The project does propose some new landscaping, and meets the West Cliff Overlay standards by landscaping unpaved portions of the exterior and side yards, removing non-native plants and replanting with native coastal bluff meadow planting. Existing fencing is proposed to remain.

- 14. The project is consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.**

The project site is within the Coastal Zone Overlay District, the Shoreline Protection Overlay District, and the West Cliff Drive Overlay District as defined in the General Plan/Local Coastal Plan. The project is consistent with the applicable policies in the General Plan/Local Coastal Plan in that the legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use, no additional units are being proposed, and the main house and guest unit are proposed to maintain their current footprints, with some later additions proposed to be removed. The interior remodel of the house will reduce the number of bedrooms from four to two, so the intensity of the use is being reduced. In order to maintain the legal nonconforming status of the residential use, the structure will remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are proposed to remain, and that the remodel does not qualify as a demolition.



The proposed improvements to the structures qualify as normal and routine maintenance with the exception of the replacement of the foundation and new lateral elements to help improve seismic performance. The Deputy Building Official has inspected the structures and in his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

Findings 6 and 7 do not apply.



**Action Agenda  
ZONING ADMINISTRATOR  
Regular Meeting  
10:00 a.m., Wednesday, January 6, 2016  
City Council Chambers  
809 Center Street**

The following is an unofficial representation of the Zoning Administrator's actions.  
Minutes are official upon approval.

**Call to Order by Zoning Administrator Eric Marlatt**

**Oral Communications—None**

**Announcements - No action shall be taken on these items.**

**Public Hearings**

**Old Business - None**

**New Business**

**1. 1307 West Cliff Drive**

**CP15-0157**

**APN 003-284-05**

Coastal and Design Permit to remodel a legal nonconforming single-family residence in the of-r/czo/spo/wcd zone district. (Environmental Determination: Categorical Exemption) (HONJO SHIGEFUMI & AMY, owner/filed: 9/17/2015) RB

This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Coastal Permit and Design Permit and per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**Action:** The Zoning Administrator acknowledged the environmental determination and approved the Coastal Permit and Design Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**2. 705 & 725 Front Street & 118 Cooper**

**CP15-0179**

**APN 005-081-59**

Administrative Use Permit and Design Permit to develop Abbott Square into a community plaza and public market including seven eating and drinking establishments (four restaurants, two food kiosks and one bar) with outdoor seating, low risk alcohol service, and incidental, live, outdoor entertainment on a property located in the CBD zone district. (Environmental Review: Categorical Exemption) (Santa Cruz COUNTY OF, owner/filed: 10/21/2015) SH

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Administrative Use Permit and Design Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

Action: The Zoning Administrator continued the item to the Zoning Administrator meeting of January 20, 2016, per the applicant's request. This item will not be re-advertised or re-noticed.

**3. 409, 411, 411-B S.BRANCIFORTE AVE CP15-0176 APN 010-111-06**

Variance for setbacks for the 411-B S. Brandforte unit and Conditional Driveway Permit to allow the relocation of a driveway serving one of three units resulting in two parking spaces located within the front yard setback of the 409 S. Brandforte unit in the RL Zone District. (Environmental Determination: Categorical Exemption) (BUSE DOREEN TRUSTEE, owner/filed: 10/13/2015) NC

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Variance and Conditional Driveway permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

Action: The Zoning Administrator acknowledged the environmental determination and approved the Variance and the Conditional Driveway Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A". Revised condition #11.

**Adjournment—10:49am**

The next Zoning Administrator meeting will be held on January 20, 2016 at 10:00 a.m. in the City Council Chambers.

Any writing related to an agenda item for the open session of this meeting distributed to the Zoning Administrator less than 72 hours before this meeting is available for inspection at the City Planning Department, 809 Center Street, Room 107 or on the City's website [www.cityofsantacruz.com](http://www.cityofsantacruz.com). These writings will also be available for review at the Zoning Administrator meeting in the public review binder at the rear of the Council Chambers.

Appeals must be received by the Planning Department within ten (10) calendar days following the date of the action from which such appeal is being taken. An appeal must be accompanied by a five hundred fourteen dollar (\$514) filing fee, unless the item involves a Coastal Permit that is appealable to the California Coastal Commission, 725 Front St., Suite 300, Santa Cruz, CA 95060 in which case there is no fee.

The City of Santa Cruz does not discriminate against persons with disabilities. Out of consideration for people with chemical sensitivities, we ask that you attend fragrance free. Upon request, the agenda can be provided in a format to accommodate special needs. Additionally, if you wish to attend this public meeting and will require assistance such as an interpreter for American Sign Language, Spanish, or other special equipment, please call the City Clerk's Department at 420-5030 at least five days in advance so that we can arrange for such special assistance, or email [CityClerk@cityofsantacruz.com](mailto:CityClerk@cityofsantacruz.com). The Cal-Relay system number: 1-800-735-2922.



**Deidre Hamilton**

**From:** Eric Simonson [ESimonson@cityofsantacruz.com]  
**Sent:** Monday, June 01, 2015 9:39 AM  
**To:** Deidre Hamilton; Ryan Bane  
**Cc:** Mike Hansmann; 'Jennifer Gogan'; 'Amy Roberto'  
**Subject:** RE: 1307 West Cliff Dr.

Deidre,

I have reviewed the Geotechnical recommendations from Haro, Kasunich as well the letter from the structural engineer Paul Endres. It would appear based on both letters and site visits from staff that, the foundation supporting these structures are failing do to the poor soils conditions the original 1940's buildings are sitting on as well as lack of proper reinforcement in the concrete. I agree with the information provided and believe the foundation system of these structures need attention as soon as possible to improve the structural integrity and safety of the occupants. Please let me know if anything further is needed from me to proceed with the replacement of the foundation and seismic resistant systems.

Thank you

Eric Simonson  
 Deputy Building Official  
 City of Santa Cruz  
 831-420-5138

---

**From:** Deidre Hamilton [<mailto:deidre@hamiltonswift.com>]  
**Sent:** Friday, May 29, 2015 9:51 AM  
**To:** 'Deidre Hamilton'; Eric Simonson; Ryan Bane  
**Cc:** Mike Hansmann; 'Jennifer Gogan'; 'Amy Roberto'  
**Subject:** RE: 1307 West Cliff Dr.  
**Importance:** High

Eric,  
 I think the City's computer system has very limited ability to receive pdf documents that are too big (this one is about 12 MB total). So I will have Amy, our office manager see if she can condense it and resend. If that doesn't work, I will make copies and have someone drop them off. Since you guys are closed to the public today is there a way we can drop them off if need be?  
 Deidre

**Deidre Hamilton**  
[deidre@hamiltonswift.com](mailto:deidre@hamiltonswift.com)



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**DEPARTMENT OF PLANNING  
AND COMMUNITY DEVELOPMENT**

**M E M O R A N D U M**

DATE: January 22, 2015

TO: Current Planners

FROM: Eric Marlatt, Principal Planner

SUBJECT: **Alteration/Remodel vs. Reconstruction of a Nonconforming Structure**

---

Issue:

At what point does voluntary work to a nonconforming structure become “reconstruction” that would require a Residential Demolition Permit and/or that would cause the structure to lose its nonconforming rights?

Applicable Code Sections:

Chapter 24.18 of the City Code provides specific requirements for nonconforming structures and nonconforming uses. In the case of a nonconforming structure that does not contain a nonconforming use, only Sections 24.18.030 and 24.18.040 are applicable.

City Code Section 24.18.030 allows for a nonconforming structure to be “enlarged or structurally altered, provided that it is not made more nonconforming.”

City Code Section 24.18.040 relates to nonconforming structures that are damaged or destroyed by fire, flood, wind, earthquake, or other disaster. This section allows for the reconstruction of a nonconforming structure that is damaged to more than fifty percent of its value with approval of a Reconstruction Permit (Chapter 24.08, Part 20).

City Code Section 24.08.1310 et seq. requires the attainment of a Residential Demolition/Conversion Authorization Permit prior to the demolition or conversion of a living unit.

Unfortunately, the Demolition definition found in Section 24.22.260 provides little, if any guidance: “Destruction of all or part of a structure.”

Interpretation:

For the purposes of determining if a Residential Demolition Permit is required, it was determined that it makes sense to use the same fifty percent threshold as Section 24.18.040 when distinguishing between voluntary (aka. does not qualify under 24.18.040) “alterations” and

Date: January 2015

Subject: Alterations vs. Reconstruction of a Nonconforming Structure

Page 2 of 2

“reconstruction”, and that the fifty percent maximum alteration relates to alterations to the perimeter walls of the structure and is exclusive of roof or foundation alterations or repairs.

Per Zoning Code, a nonconforming structure can be altered or expanded provided it is not made more nonconforming. If the expansion or alteration does not conform to current zoning code requirements (ex. extending a wall within a setback with a Design Permit), it is not made conforming by way of section 24.18.030, rather, it would remain nonconforming and subject to the requirements in the nonconforming sections of the zoning code, unless a Variance is obtained.

Process:

In order to make the determination of whether a demolition permit is required and whether a structure can maintain its nonconforming status, the applicant needs to provide the existing total lineal feet of the perimeter walls of the entire structure and the total lineal feet of the perimeter walls to be altered or reconstructed. Accompanying to-scale drawings distinguishing the exterior walls to remain from those to be demolished also need to be provided.

- If less than 50-percent of the exterior walls are demolished, a Residential Demolition Permit shall not be required and/or the structure can maintain its nonconforming status.
- If greater than 50-percent alteration, the work shall require a Residential Demolition Permit and all current site standards must be met, as this constitutes reconstruction, unless appropriate Variances are approved.

**\*\*Note:** Even if all proposed work is to occur on the nonconforming portion of the house, the house may maintain its nonconforming status if the work constitutes less than 50% of the perimeter wall length for the entire structure.



**BRISCOE IVESTER & BAZEL LLP**

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**By Electronic and Regular Mail**

September 15, 2016

**RECEIVED**

SEP 15 2016

Ryan Moroney  
Supervising Coastal Planner  
California Coastal Commission  
Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Re: Appeal No. A-3-STC-16-0016 of Coastal Development Permit No. CP15-0157 to remodel single-family residence at 1307 West Cliff Drive, Santa Cruz

Dear Mr. Moroney:

**INTRODUCTION**

I write on behalf of Shigefumi and Amy Honjo (the "Honjos") with respect to Appeal No. A-3-STC-16-0016 of Coastal Development Permit ("CDP") No. CP15-0157 issued by the City of Santa Cruz ("City") on January 6, 2016, authorizing the Honjos to remodel their single-family home in Santa Cruz. The standard of review governing the appeal is whether the CDP is consistent with the City's certified Local Coastal Program ("LCP"). A preliminary issue is whether the appeal raises a "substantial issue" with respect to the grounds on which the appeal was filed. (Pub. Resources Code § 30625(b).)

Deidre Hamilton, the Honjos' planning consultant, wrote you on March 23, 2016, responding to the appellant's arguments and showing that the CDP conforms to the LCP and the appeal does not raise a "substantial issue."

I write not to repeat that discussion, but only to address certain legal aspects of the discussion that affirm the appeal does not raise a substantial issue. We urge the Commission to find no substantial issue and uphold the City's CDP.

**BACKGROUND**

The residence at 1307 West Cliff Drive, now owned by the Honjos, was built in the 1940s. After the house was built, the City enacted a zoning ordinance placing the property in

the Ocean Front Recreational zone district, a district in which single family homes generally are not a permitted use. With enactment of the ordinance, the pre-existing residence became a “nonconforming use” under the Municipal Code of the City of Santa Cruz (“City Code”)—a use that is “legal” and “may be continued” except as otherwise provided in the City Code. (City Code §§ 24.18.020, 24.22.566.)

The City Code also provides, in pertinent part: “Any nonconforming use may be maintained and continued, provided there is no expansion in the area or volume occupied or devoted to such nonconforming use, and further provided there is no increase in the intensity of such nonconforming use except as otherwise provided in this title [i.e., the zoning ordinance].” (*Id.* at § 24.18.060.) “Normal and routine maintenance or nonstructural alterations of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, rendering the space more usable, or complying with the requirements of law shall be permitted. . . . Buildings containing nonconforming residential uses may be altered to improve livability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.” (*Id.* at § 24.18.080.) “A nonconforming structure may be enlarged or structurally altered, provided that it is not made more nonconforming.” (*Id.* at § 24.18.030.) “Nothing in [the City Code chapter on nonconforming uses and structures] shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official.” (*Id.* at 24.18.020.)

In keeping with these provisions, the Honjos applied to the City for a CDP to remodel their home. They proposed to fix the house’s failing foundation and remedy an unsafe condition that had arisen over time as the soil on which the house was built had shifted and the foundation had cracked and shifted as well. They also proposed to update portions of the outdated house, while retaining its size and maintaining the public’s ocean views. The proposed plans would actually reduce the residence’s overall mass and reduce the number of bedrooms from four to two. The Honjos’ proposed plans also aimed to better blend the residence with the natural environment by, for instance, replacing non-native ice plant with native coastal adapted plants. Notably, the proposed plans would leave more 50 percent of the exterior walls standing.

Following its review of the Honjos’ permit application, the City found the proposed remodeling to be consistent with its LCP, approved the project, and issued a CDP.

A neighbor appealed the CDP to the Commission. (Appeal No. A-3-STC-16-0016, filed February 2, 2016.)

**AS THE COASTAL DEVELOPMENT PERMIT IS CONSISTENT WITH THE LOCAL COASTAL PROGRAM, THE APPEAL DOES NOT RAISE A "SUBSTANTIAL ISSUE"**

**I. The Local Coastal Program Establishes That The Honjos' Legal Nonconforming Residential Use And Residence May Be Continued, Maintained, And Improved**

Zoning is an exercise of the police power by a local government to regulate land uses and structures within its boundaries. (Cal. Const. art. XI, § 7.) Nonconforming uses arise from the operation of local zoning ordinances, and are governed by those ordinances. While a state may enact statutes to broaden or narrow a local government's authority to regulate nonconforming uses, California (like most states) has not done so (with a few exceptions not pertinent here, e.g., regarding multi-family dwellings (Gov. Code § 65852.25)), thus leaving local governments to address nonconforming uses as they choose, subject naturally to constitutional limitations on the police power. Local governments, thus, may choose to authorize the continuance or call for the discontinuance of nonconforming uses as they see fit, as long as they act in keeping with pertinent constitutional limitations.

A "charter city," such as Santa Cruz, generally enjoys broader powers and autonomy than does a "municipal law city." The City's charter provides that "[t]he City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California." (City Charter § 401; Cal. Const. art. XI, §§ 5-6.) State statutes regarding planning and zoning, such as the Planning and Zoning Law (Gov. Code § 65000 et seq.), which generally apply to municipal law cities, do not apply to charter cities unless a city has adopted the statute or the Legislature has expressly required application of a particular statute (e.g., Gov. Code § 65700(b), requiring charter cities to apply coastal zone affordable housing requirements under Gov. Code § 65590(b)). (Gov. Code § 65700.)

The City's Municipal Code, and particularly Chapter 24.18 which is also part of the LCP, thus establishes the law governing nonconforming uses and structures within the City of Santa Cruz. While it is sometimes said that usually the purpose of a nonconforming use ordinance is the elimination of nonconforming uses over time, that is not necessarily or always so. Each local government is free to choose its own approach in its exercise of the police power. Moreover, even to the extent that a local government's purpose in its nonconforming use ordinance may be the eventual elimination of nonconforming uses, the local government is free to choose the means by which it will effectuate that purpose. The City of Santa Cruz has chosen in its ordinance to authorize the continuance of legal nonconforming uses until they are voluntarily discontinued; the City has not prescribed otherwise terminating such uses. That is the operative



law governing nonconforming uses within the City of Santa Cruz. Neither the Coastal Act nor any other state statute prescribes any law contrary to the City's Municipal Code in this regard.

The City has specified that "[t]he purpose of [Chapter 24.18, its nonconforming use ordinance] is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this title [i.e., the zoning ordinance] for the district in which they are located." (City Code § 24.18.010.) In the remainder of Chapter 24.18 of the City Code, the City elaborates on what it means by "control, improvement and termination" of such uses and structures and specifies the means by which it will pursue that purpose.

The City first establishes the basic rule that any "legally nonconforming" use or structure "*may be continued*, except as otherwise provided in this chapter." (City Code § 24.18.020, emphasis added.) It adds:

2. Any legal nonconforming use may be continued, provided there is no increase in the intensity of such use.

3. Any legal nonconforming building or structure shall not be made more nonconforming.

....

6. Nothing in the chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official.

(*Id.* at § 24.18.020.) Along the same lines, the City provides:

Any nonconforming use may be maintained and continued, provided there is no expansion in the area or volume occupied or devoted to such nonconforming use, and further provided there is no increase in the intensity of such nonconforming use except as otherwise provided in this title [i.e., the zoning ordinance].

(*Id.* at § 24.18.060.) This provision notably allows for an increase in the intensity of nonconforming uses as long as it is as otherwise provided in the City's zoning ordinance.

The City declares not only that nonconforming uses and structures "may be continued," but also that they may be maintained and improved:

1. Normal and routine maintenance or nonstructural alterations of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, rendering the space more usable, or complying with the requirements of law shall be permitted.
2. Structural alterations or enlargement of the building containing nonconforming, nonresidential uses shall be permitted only to accommodate a conforming use, or when made to comply with the requirements of the law.
3. Buildings containing nonconforming residential uses may be altered to improve livability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.

(*Id.* at § 24.18.080.) The purpose of such maintenance or improvement of residential uses and structures, it bears noting, may be not only “preserving its existing condition,” but also “retarding or eliminating wear and tear or physical depreciation, rendering the space more usable, or complying with the requirements of law,” “strengthening or restoring [a building] to a safe condition,” or “to improve livability.” Moreover, the City adds:

A nonconforming structure may be enlarged or structurally altered, provided that it is not made more nonconforming.

(*Id.* at § 24.18.030.)

More than that, in furtherance of its general rule that nonconforming uses and structures may be continued, the City provides that even if a nonconforming structure is damaged or destroyed, it may be repaired or rebuilt:

A nonconforming structure which is damaged or destroyed by fire, flood, wind, earthquake, or other disaster may be repaired or reconstructed. A nonconforming structure damaged to more than fifty percent of its value as determined by the chief building official shall require approval of a reconstruction permit (Chapter 23.08, Part 20). Buildings or structures damaged more than fifty percent as described above that are nonconforming only because of noncompliance with setbacks from a watercourse or wetland as required in Chapter 24.08, Part 21 may be reconstructed subject to a building permit only provided that the general requirements in Section 24.08.2030 are met.

(*Id.* at 24.18.040.)

Nowhere in its ordinance does the City place a time limit on the maintenance and continuance of nonconforming uses or structures. Nor does the City call for the elimination of nonconforming uses or structures or prescribe any requirement or procedure for affirmatively removing such uses or structures. To the contrary, as noted above, the City affirms that such uses and structures “may be continued” and, toward that end, such structures may, with certain provisos, be maintained, repaired, strengthened or restored to a safe condition, altered, enlarged, or even reconstructed. The City moreover allows maintenance and continuation of a nonconforming use that entails an “increase in the intensity of such nonconforming use . . . as otherwise provided in this title [i.e., the zoning ordinance].” (*Id.* at § 24.18.060.) Appellant’s supposition that the City Code does not intend nonconforming structures to be strengthened for longevity is, thus, mistaken. (Appeal, p. 4.)

Rather, the *only* way the City provides for the discontinuance of nonconforming uses and structures is voluntary discontinuance or abandonment or change of use by owners:

1. Any nonconforming, nonresidential use that is nonconforming due to district use regulations and/or violates performance standards and which is discontinued or abandoned or otherwise ceases operation for a period of six months or more shall not be resumed, and all subsequent use of such structure or portion of structure or site shall conform to this title. An administrative use permit shall be required for a new use exceeding the parking requirement for the use it replaces. The approving body shall find that the reduction in parking requirements will not adversely affect parking on adjacent and nearby streets and properties.
2. Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this title, regardless of the period of time such conforming use occupies the building, such premises shall not thereafter be used or occupied by a nonconforming use.
3. Any uses nonconforming by reason of noncompliance with performance standards established herein shall be deemed illegal until compliance with performance standards is achieved.
4. Notwithstanding the provisions of subsection (1), above, any nonconforming use which operates on property being acquired by the city or redevelopment



agency by eminent domain or under threat of condemnation and which is required to discontinue or otherwise cease operation because of construction activities undertaken by the city or redevelopment agency may resume said use without losing its status as nonconforming: (1) within two years; or (2) within six months after the city's or redevelopment agency's construction activities are completed so as to enable said use to resume, whichever is later. Nothing contained in this subsection shall be construed as having any effect upon the city's or redevelopment agency's proprietary interest in property acquired by eminent domain or under threat of condemnation.

(*Id.* at § 24.18.070.)

All in all, the City Code and LCP establish that a nonconforming use and structure is "legal" and "may be continued." Toward that end, the City Code and LCP provide that a legal nonconforming structure may (with certain provisos) be maintained and improved. The City Code and LCP do not call for the elimination or termination of legal nonconforming uses or structures and, instead, affirm that such uses and structures "may be continued" until the owner discontinues or abandons the use or structure or changes the use.

## **II. The CDP Properly Authorizes Maintenance Of The Residence In Keeping With The Local Coastal Program**

In issuing the CDP, the City found that "[t]he project is consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act." (Ex. 1, p. 13 [City findings p. 5].) The City explained:

A geotechnical investigation prepared by Haro, Kasunich and Associates explored and evaluated the surface and subsurface soil conditions on the site, and provides geotechnical criteria for the design and construction of the new foundation elements for the proposed project. . . . As part of the remodel, the applicant is proposing to replace the foundations that are failing as well as new lateral elements to help improve seismic performance. Deputy Building Official Eric Simonson inspected the structures and found that the foundations are failing due to the poor soil conditions that the original 1940s buildings are sitting on, as well as the lack of proper reinforcements in the concrete. He also reviewed the geotechnical investigation prepared by Haro, Kasunich and Associates and agreed with their recommendations. It [sic] his professional opinion that the foundation

systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants.

....

The project is consistent with the applicable policies of the General Plan/Local Coastal Plan in that the legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use, no additional units are being proposed, and the main house and guest unit are proposed to maintain their current footprints, with some later additions proposed to be removed. The interior remodel of the house will reduce the number of bedrooms from four to two, so the intensity of the use is being reduced. In order to maintain the legal nonconforming status of the residential use, the structure will remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are proposed to remain, and that the remodel does not qualify as a demolition.

The proposed improvements to the structures qualify as normal and routine maintenance with the exception of the replacement of the foundation and new lateral elements to help improve seismic performance. The Deputy Building Official has inspected the structures and it [sic] his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

(Ex. 1, pp. 10-11, 13-14 [City findings pp. 2-3, 5-6].)

The appellant merely characterizes the remodeling plans and asserts that they are inconsistent with the ordinance (Appeal p. 3), but fails to offer any argument in support of this assertion or against the City's findings and explanation. The appeal thus fails to raise a substantial issue.

### **III. The City Properly Applied The LCP In Determining The CDP To Authorize Maintenance Rather Than Reconstruction Of The Residence**

The appellant does not raise any question about the City's reading of its LCP with respect to distinguishing between maintenance and reconstruction of the Honjos' residence. It bears noting nonetheless that the City properly applied the LCP in this regard.

As observed above, in finding the CDP consistent with the LCP, the City explained:

In order to maintain the legal nonconforming status of the residential use, the structure will remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are proposed to remain, and that the remodel does not qualify as a demolition.

(Ex. 1, p. 13 [City findings p. 5.]

The City further explained in a memorandum by its Principal Planner Erick Marlatt its use of 50-percent of the exterior walls as the criterion for distinguishing between "alteration" (or the like terms maintenance, remodel, and repair) and "reconstruction" as those terms are used in the LCP. (Ex. 2.) Noting that section 24.18.040 of the City Code "allows for the reconstruction of a nonconforming structure that is damaged to more than fifty percent of its value with approval of a Reconstruction Permit . . .," but that other provisions, e.g., section 24.18.030, allowing for a nonconforming structure to be "enlarged or structurally altered" do not offer corresponding guidance, Mr. Marlatt stated:

For the purposes of determining if a Residential Demolition Permit is required, it was determined that it makes sense to use the same fifty percent threshold as Section 24.18.040 when distinguishing between voluntary (aka. does not qualify under section 24.18.040) "alterations" and "reconstruction", and that the fifty percent maximum alteration relates to alterations to the perimeter walls of the structure and is exclusive of roof or foundation alterations or repairs.

(Ex. 2, pp. 1-2.) He then detailed the process by which the City reviews construction plans and conducts this analysis.

The City's understanding and application of its LCP in this regard is entirely reasonable—and moreover consistent with the Coastal Act. Certainly nothing in the Coastal Act



precludes the City's approach or compels a different one. Indeed, were the Commission nonetheless to develop and use a different one, it would run afoul of legal constraints against a state agency adopting an underground regulation (Gov. Code § 11340 *et seq.*) or against the Commission in effect amending a city's LCP during an appeal from the city's grant of a CDP (Pub. Resources Code § 30514(a); *Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 420-421).

In any event, the Commission has already recognized that a 50-percent-of-exterior-walls approach, such as employed by the City here, to distinguish maintenance or remodeling from reconstruction is consistent with the Coastal Act. In various proceedings, the Commission has certified that LCPs with similar 50-percent-of-exterior-walls standards are consistent with the Coastal Act and, when reviewing CDP applications for projects within areas of its retained permit jurisdiction, has itself applied such a standard in finding whether a CDP is consistent with the Coastal Act and should be approved.

When the Commission certifies LCPs, it confirms that they are consistent with the Coastal Act. (Pub. Resources Code § 30512). Because the Commission has certified LCPs containing the 50-percent-of-exterior-walls standard, it has certified that those plans and that standard are consistent with the Coastal Act. For example, the Commission certified the City of Malibu's LCP, which contains a provision essentially identical to the 50-percent-of-exterior walls standard used by the City of Santa Cruz:

Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the extent of nonconformity of the structure. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements comply with the current standards and policies of the LCP and do not increase the extent of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.

(City of Malibu, Local Coastal Program, Land Use Plan, Chap. 4, Subchapter C, § 4.15.)

The Commission has also commonly employed a 50-percent-of-exterior-walls standard when reviewing CDP applications. It did so, for instance, in approving a CDP in 2010 to remodel a legal nonconforming residence in San Diego that did not conform to setback

requirements of San Diego's certified Land Development Code. That code provided that "[w]ithin the Coastal Overlay Zone, if the proposal involves the demolition or removal of 50 percent or more of the exterior walls of an existing structure, the previously conforming rights are not retained for the new structure." (CDP Application No. 6-10-069 (Moran), p. 8.) Because the residence was located in an area where the Commission retained permit jurisdiction, it reviewed the proposed remodeling project for compliance with Chapter 3 of the Coastal Act and used the City's LCP as guidance. (*Id.* at 6-7.) Noting that "[i]n its approval of past projects involving partial demolition and reconstruction of an existing non-conforming structure, the Commission has found that if more than 50 percent of the exterior walls of a structure are being demolished, the proposal constitutes the development of a new structure and therefore, the entire structure must be brought into compliance with the current requirements," the Commission found that "the proposed remodel will not result in the demolition of over 50 percent of the exterior walls and thus would not constitute development requiring conformance with LDC setback requirements." (*Id.* at 8-9; Addendum at 1.) On that basis, the Commission found that the project "will be in conformity with the policies of Chapter 3 of the Coastal Act. (*Id.* at 2.)

Similarly, in approving a CDP application in 2011 to remodel an apartment building in San Diego, the Commission explained:

Typically, the Commission has quantified demolition by tabulating the extent of exterior linear walls to be removed compared to the total overall amount of exterior linear walls existing prior to the proposed development. The walls proposed to remain must retain their structural components such as studs and foundation. Cosmetic portions of the wall, such as exterior stucco and interior drywall, may be removed. The applicant has submitted information regarding the extent of demolition proposed. According to the applicant's demolition information, approximately 36% of the existing exterior linear walls will be demolished with the proposed development. The Commission has generally found that if less than 50% of the linear feet of the existing exterior walls are removed, the project can be reviewed as a remodel rather than substantial re-development, consistent with the above referenced LDC provision. The significance of this distinction is that existing non-conformities, such as existing development within a setback area, can be considered for retention if such retention would not raise significant inconsistencies with Coastal Act requirements. The 50% demolition threshold provides one consistent and equitable method of dealing with existing non-conformities associated with extensive remodel projects. In this case, the proposed demolition does not exceed the 50% exterior wall demolition threshold.

BRISCOE IVESTER & BAZEL LLP

Ryan Moroney

September 15, 2016

Page 12

Thus, given these site specific factors, in this case the Commission finds the project does not constitute substantial re-development.

(CDP Application No. 6-10-64 (Riviera Pacific), p. 9.)

Likewise, in reviewing another CDP application in 2010 for a project within its retained permit jurisdiction in the City of Laguna Beach, the Commission—this time without reference to any City LCP provision for guidance—observed that it “has consistently found that greater than 50% demolition of a structure’s existing exterior walls constitutes demolition and that the replacement structure is new development for purposes of bringing the structure into conformance.” (CDP Application No. 5-10-031 (Paicius), p. 1.) Rejecting the applicant’s argument that its project should be viewed as a remodel even though not meeting that standard, the Commission found “that application of the 50% demolition threshold provides an equitable method of dealing with existing non-conformities associated with extensive remodel projects.” (*Id.* at 5.)

The Commission thus has confirmed that the 50-percent-of-exterior-walls standard used by the City of Santa Cruz to determine that the Honjos propose to remodel, not reconstruct, their residence is both equitable and consistent with the Coastal Act.

### CONCLUSION

We urge the Commission to find that the appeal does not raise a substantial issue and uphold the City’s CDP.

Sincerely,

BRISCOE IVESTER & BAZEL LLP

  
David Ivester



## **Exhibit 1**



**FILE COPY**

**PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT**  
809 Center Street ~ Room 206 ~ Santa Cruz, CA 95060 ~ (831) 420-5100

## **ZONING PERMIT**

PROJECT #CP15-0157

OWNER: HONJO SHIGEFUMI & AMY  
1307 W CLIFF DR  
SANTA CRUZ CA 95060

APPLICANT: HAMILTON SWIFT AND ASSOCIATES  
500 CHESTNUT STREET  
SANTA CRUZ CA 95060

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APN(s)/Address(es):

003-284-05/1307 WEST CLIFF DR

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The following permit(s) was/were approved on 01/06/2016 by the Zoning Administrator and will be effective on 01/19/2016 unless appealed. If the final day for filing an appeal (ten calendar days following the approval date) occurs on a weekend day or holiday, the final filing date shall be extended to the following workday. If no appeal is filed, the effective date shall be the day after the final appeal filing date.

- ☒ Coastal Permit\*  
☒ Design Permit

By: 

Eric Marlatt, Zoning Administrator

This permit is issued to the owner of the property. In executing this permit, applicant/owner agrees to comply with all terms of permit(s), including conditions of approval, if any. Permit must be exercised within 36 months of date of issuance (above) unless otherwise indicated in conditions of approval. See reverse for information regarding appeals and property reassessment.

---

\* Coastal Permit - This Coastal Permit is appealable to the California Coastal Commission following appeal to the Planning Commission and City Council. Appeals must be filed within ten (10) working days after final action by City Council. There is no fee. Appeal forms are available in the Regional Office of the Coastal Commission: 725 Front St, Suite 300, Santa Cruz CA 95060.

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CC: County Assessor's Office  
File  
Coastal Commission

In accordance with Chapter 24.04 of the Santa Cruz Municipal Code, any interested person may appeal a final action of a hearing body or staff. Appeal of a decision of the City Planning Director or the Zoning Administrator must be made to the Planning Commission through the Planning Department. Appeals of a decision of the City Planning Commission or Historic Preservation Commission must be made to the City Council through the City Clerk. All appeals must be made in writing and state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be accompanied by the required appeal fee. \*\*Appeals must be received no later than ten (10) calendar days following the action from which the appeal is being taken. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

Whenever any permit is denied or withdrawn, no new application for the same or substantially the same project may be filed for a period of one year from the date of said denial or withdrawal. Where an application has been denied without prejudice, application for the same or substantially the same project may be filed within said period of one year.

In accordance with Section 65863.5 of the Government Code, a copy of this permit has been sent to the County Assessor. It is the Assessor's duty, under Section 402.2 of the Revenue and Taxation Code, to reassess the property to the extent permitted by law. If, after receiving your notice of assessment, your opinion of value differs from the Assessor's valuation, you have the right of protest and appeal. Contact the Assessor's Office immediately to discuss the valuation. If there is still a difference of opinion, you may request a hearing before the Assessment Appeals Board. Application for such hearing must be filed in writing with the Clerk of the County Board of Supervisors, County Courthouse, 701 Ocean St, Santa Cruz CA 95060, between July 2 and August 26 of each tax year.



**CONDITIONS OF APPROVAL**  
**For 1307 West Cliff Drive – CP14-0157**

7. Except as modified by other conditions of approval, the development of the site shall be in substantial accordance with the approved plans prepared by Endres Studio Architecture Engineering (dated 9/4/15), and on file in the Department of Planning and Community Development of the City of Santa Cruz except as modified herein. All aspects of construction must be completed prior to occupancy. Major modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.
8. All requirements of the Building, Fire, Water, and Public Works Departments shall be completed prior to occupancy and continuously maintained thereafter.
9. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
10. All refuse and recycling activities during construction shall be done in accordance with Chapter 6.12 of the Santa Cruz Municipal Code. Be aware that private companies offering refuse or debris box services are not allowed to operate within the City limits, except under certain limited circumstances detailed in Chapter 6.12.160.
11. The final landscape plan shall be in substantial accordance with the approved plans submitted and on file in the Department of Planning and Community Development of the City of Santa Cruz.
12. All landscaping shall be installed prior to final utility release or issuance of occupancy permits.
13. Prior to site grading or any disturbance all trees and/or tree stands indicated for preservation in the approved plans shall be protected through fencing or other approved barricade. Such fencing shall protect vegetation during construction and shall be installed to the satisfaction of the Director of Planning and Community Development.
14. The applicant shall implement all recommendations presented in the *Tree Assessment & Pruning Specification* prepared by *Maureen Hamb- Certified Arborist* on April 1, 2015.
15. The applicant shall implement all recommendations presented in the *Geotechnical Investigation for the Proposed Remodel of Main Residence and Guest House 1307 West Cliff Drive (January 2015)* and the *Supplemental Geotechnical Recommendation for the Driveway Retaining Wall (September 4, 2015)* prepared by *Haro, Kasunich and Associates, Inc.*

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**CONDITIONS OF APPROVAL**

**For 1307 West Cliff Drive – CP14-0157**

16. All new mechanical equipment and appurtenances, including gas and water meters, electrical boxes, roof vents, air conditioners, antennas, etc. visible from the public way and from adjacent properties, shall be screened with material compatible with the materials of the building and shall be subject to the approval of the Zoning Administrator.
17. Final colors shall be approved by the Zoning Administrator prior to application for building permits.



**Dept. of Planning and Community Development**  
809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## **Notification of Final Local Action on Coastal Permits**

**Date:** January 19, 2016

**To:** Attn: Ryan Moroney, Coastal Planner  
California Coastal Commission  
Central Coast District  
725 Front St., Ste 300  
Santa Cruz, CA 95060

**From:** City of Santa Cruz Planning Department

Please be advised of the following actions:

☒ **Zoning Administrator hearing of** January 6, 2016  
(Date)

☒ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case:

File No CP15-0157 Address: 1307 West Cliff Drive

☒ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ **Planning Commission hearing of** \_\_\_\_\_  
(date)

☐ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case numbers:

File No.: \_\_\_\_\_ Address: \_\_\_\_\_

☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ **City Council hearing of** \_\_\_\_\_  
(date)

☐ Local appeals **have not** been filed on the following case:

☐ Local appeals **have been** filed on the following case numbers:

File No.: \_\_\_\_\_ Address: \_\_\_\_\_

☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ This project is not appealable to the California Coastal Commission. Section 24.04186.

Action Agenda for coastal permits acted upon is attached.



**EXHIBIT "A"**

**CONDITIONS OF APPROVAL FOR THE PROJECT AT**

**1307 West Cliff Drive – Application No. CP14-0157**

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the  
OF-R/CZ-O/SP-O/WCD-O zone district.**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. This permit shall be exercised within three (3) years of the date of final approval or it shall become null and void.
4. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
5. All final working drawings shall be submitted to the Zoning Administrator for review and approval in conjunction with the building permit application. The plans submitted for building permits shall have the same level of articulation, detailing, and dimensionality as shown in the approved plans. All approved exterior finishes and materials shall be clearly notated on the building permit plans.
6. The applicant and contractor who obtains a building permit for the project shall be required to sign the following statement at the bottom of these conditions, which will become conditions of the building permit:

"I understand that the subject permit involves construction of a building (project) with an approved Design Permit. I intend to perform or supervise the performance of the work allowed by this permit in a manner which results in a finished building with the same level of detail, articulation, and dimensionality shown in the plans submitted for building permits. I hereby acknowledge that failure to construct the building as represented in the building permit plans, may result in delay of the inspections process and/or the mandatory reconstruction or alteration of any portion of the building that is not in substantial conformance with the approved plans, prior to continuation of inspections or the building final."

---

Signature of Building Contractor

Date

## EXHIBIT "B"

### FINDINGS FOR APPROVAL FOR THE PROJECT ON PROPERTY AT

1307 West Cliff Dr.—Application #CP15-0157

**Coastal and Design Permits to remodel a legal nonconforming single-family residence in the OF-R/CZ-O/SP-O/WCD-O zone district.**

#### **FINDINGS**

##### **Coastal Permit, Section 24.08.250**

1. **Maintain views between the sea and the first public roadway parallel to the sea.**

The improvements to the residential structures will not affect coastal views as the location, massing, and volume of the structures will remain unchanged.

2. **Protect vegetation, natural habitats and natural resources consistent with the Local Coastal Land Use Plan.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

3. **Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan.**

The project site is within the West Cliff Drive Overlay zone. The standards include special requirements for calculating height, floor area ratio, setbacks, and landscaping. The project as proposed is consistent with the WCD development standards.

4. **Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.**

This project will not affect public access to the coast therefore, this finding is not applicable.

5. **Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate.**

This project will not affect visitor- serving needs therefore, this finding is not applicable.

6. **Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.**

This is a proposal to remodel an existing legal nonconforming single family dwelling; therefore this finding is not applicable.

**Shoreline Protection Overlay District, Section 24.10.2430**

7. **The project protects trees and vegetation and sensitive wildlife habitat.**

The proposed improvements to the single-family home will not cause substantial environmental damage, or substantially injure fish, wildlife, or their habitats. The project includes a landscape plan that proposes the removal of non-native plants and replanting of native coastal bluff meadow planting, as well as the pruning of existing Monterey Cypress and Eucalyptus trees to improve their structure, reduce weight, balance their canopy, and lessen erosion around the surface of the trees.

8. **The project is consistent with the following criteria for bluff or cliff development:**

- a. **The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.**

The project involves the remodel of an existing legal nonconforming single-family house that has been located on the coastal bluff since 1940. The proposed improvements to the structure, including a new foundation and seismic system will assure stability and structural integrity of the home's expected economic life span and will not impact any natural land forms.

A geotechnical investigation prepared by Haro, Kasunich and Associates explored and evaluated the surface and subsurface soil conditions on the site, and provides geotechnical criteria for the design and construction of the new foundation elements for the proposed project. The new foundation elements are to be embedded two feet below existing grade to bear upon the dense cemented sands. The remodeled structure will also include full gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.



An approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing 1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

As part of the remodel, the applicant is proposing to replace the foundations that are failing as well as new lateral elements to help improve seismic performance. Deputy Building Official Eric Simonson inspected the structures and found that the foundations are failing due to the poor soils conditions that the original 1940s buildings are sitting on, as well as the lack of proper reinforcements in the concrete. He also reviewed the geotechnical investigation prepared by Haro, Kasunich and Associates and agreed with their recommendations. It is his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants.

- b. The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

- c. The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.**

The remodel of the existing legal nonconforming single-family house utilizes the existing footprint and will not alter the existing cliff or bluff top, therefore not interfering with sand movement.

- d. The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.**

An approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing

1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

The project proposes the installation of a small retaining wall along the outboard edge of the existing driveway. The driveway is currently being undermined by runoff from surface drainage due to a West Cliff Drive storm drain outlet that has frequently overflowed. In order to maintain the driveway and prevent further erosion, a soil pin wall has been designed and recommended by Haro, Kasunich and Associates Inc. A supplemental geotechnical report has been included as part of the submittal. No sea wall is proposed as part of this application.

- e. **The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.**

The remodel of the existing legal nonconforming single-family house will not create or contribute significantly to problems of erosion or geologic instability on the site. A geotechnical investigation has been prepared with recommendations to more firmly embed a new foundation mitigating severe seismic shaking, and implementing a full gutter system to collect and control roof runoff, directing it toward the street storm drain system.

Additionally, an approved Administrative Permit (Permit 3-92-78) from the Coastal Commission for the installation of 300 cubic yards of rip rap to an existing 1400 cubic yards of rip rap seawall as maintenance and repair in 1992. This approved shoreline protection stabilizes the bluff and therefore bluff setbacks are not applicable.

- 9. **The project provides maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title.**

The applicant will be required to provide erosion control measures with the building permit application materials. The remodeled structure will also include full gutters to collect and control roof runoff which is to be conveyed to either the street storm drain or to discharge upon the bedrock exposed below the soil mantle on the seaward side of the parcel. Concentrated surface runoff will not be allowed to flow toward or over the top of the coastal bluff.

- 10. **The project maintains public view corridors between the sea and the first public roadway parallel to the sea and maintains natural views of the coastline.**

The improvements to the residential structures will not affect coastal views as the footprint, massing, and volume of the structures will remain unchanged.

- 11. The project protects paleontological resources as prescribed in the Land Use Plan.**

The site is not located within a mapped paleontological sensitive area.

- 12. The project is compatible with the established physical scale of the area.**

The project involves a remodel of an existing single-family house with no additions or increase in massing or volume. The 75 year old structure will remain compatible with the established physical scale of the area.

- 13. The project is consistent with the design review guidelines of this title and the policies of any applicable area plan.**

The property is located in the West Cliff Drive Overlay District which has specific regulations regarding building height, building envelope, setbacks, floor area ratio (FAR), parking, landscaping, and fencing. The project involves the remodel of an existing single-family house with no additions or increase in massing or volume; therefore with no expansion most of the regulations are not applicable for this project. The project does propose some new landscaping, and meets the West Cliff Overlay standards by landscaping unpaved portions of the exterior and side yards, removing non-native plants and replanting with native coastal bluff meadow planting. Existing fencing is proposed to remain.

- 14. The project is consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.**

The project site is within the Coastal Zone Overlay District, the Shoreline Protection Overlay District, and the West Cliff Drive Overlay District as defined in the General Plan/Local Coastal Plan. The project is consistent with the applicable policies in the General Plan/Local Coastal Plan in that the legal nonconforming residential use is proposed to be remodeled and maintain current footprints. There is no expansion of use, no additional units are being proposed, and the main house and guest unit are proposed to maintain their current footprints, with some later additions proposed to be removed. The interior remodel of the house will reduce the number of bedrooms from four to two, so the intensity of the use is being reduced. In order to maintain the legal nonconforming status of the residential use, the structure will remain intact with more than 50-percent of the exterior walls to remain as part of the remodel. An in-depth review of the demolition plans has been completed to insure that more than 50-percent of the exterior walls are proposed to remain, and that the remodel does not qualify as a demolition.



The proposed improvements to the structures qualify as normal and routine maintenance with the exception of the replacement of the foundation and new lateral elements to help improve seismic performance. The Deputy Building Official has inspected the structures and in his professional opinion that the foundation systems and lateral elements for these structures need attention as soon as possible in order to improve the structural integrity and safety of the occupants. Improvements to the structures and landscaping will enhance the visual quality of the site from the public view shed, and drainage improvements will help direct water from the cliff to help prevent erosion and protect not only the subject property, but the public right-of-way for future public access to West Cliff Drive.

Findings 6 and 7 do not apply.



**Action Agenda  
ZONING ADMINISTRATOR  
Regular Meeting**

**10:00 a.m., Wednesday, January 6, 2016  
City Council Chambers  
809 Center Street**

The following is an unofficial representation of the Zoning Administrator's actions.  
Minutes are official upon approval.

**Call to Order by Zoning Administrator Eric Marlatt**

**Oral Communications—None**

**Announcements - No action shall be taken on these items.**

**Public Hearings**

**Old Business - None**

**New Business**

**1. 1307 West Cliff Drive**

**CP15-0157**

**APN 003-284-05**

Coastal and Design Permit to remodel a legal nonconforming single-family residence in the of-r/czo/spo/wcd zone district. (Environmental Determination: Categorical Exemption) (HONJO SHIGEFUMI & AMY, owner/filed: 9/17/2015) RB

This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Coastal Permit and Design Permit and per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**Action:** The Zoning Administrator acknowledged the environmental determination and approved the Coastal Permit and Design Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

**2. 705 & 725 Front Street & 118 Cooper**

**CP15-0179**

**APN 005-081-59**

Administrative Use Permit and Design Permit to develop Abbott Square into a community plaza and public market including seven eating and drinking establishments (four restaurants, two food kiosks and one bar) with outdoor seating, low risk alcohol service, and incidental, live, outdoor entertainment on a property located in the CBD zone district. (Environmental Review: Categorical Exemption) (Santa Cruz COUNTY OF, owner/filed: 10/21/2015) SH

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Administrative Use Permit and Design Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

Action: The Zoning Administrator continued the item to the Zoning Administrator meeting of January 20, 2016, per the applicant's request. This item will not be re-advertised or re-noticed.

**3. 409, 411, 411-B S.BRANCIFORTE AVE CP15-0176 APN 010-111-06**

Variance for setbacks for the 411-B S. Branciforte unit and Conditional Driveway Permit to allow the relocation of a driveway serving one of three units resulting in two parking spaces located within the front yard setback of the 409 S. Branciforte unit in the RL Zone District. (Environmental Determination: Categorical Exemption) (BUSE DOREEN TRUSTEE, owner/filed: 10/13/2015) NC

**Recommendation:** That the Zoning Administrator acknowledge the environmental determination and approve the Variance and Conditional Driveway permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A".

Action: The Zoning Administrator acknowledged the environmental determination and approved the Variance and the Conditional Driveway Permit per the findings noted in the staff report and the Conditions of Approval, listed as Exhibit "A". Revised condition #11.

**Adjournment—10:49am**

The next Zoning Administrator meeting will be held on January 20, 2016 at 10:00 a.m. in the City Council Chambers.

Any writing related to an agenda item for the open session of this meeting distributed to the Zoning Administrator less than 72 hours before this meeting is available for inspection at the City Planning Department, 809 Center Street, Room 107 or on the City's website [www.cityofsantacruz.com](http://www.cityofsantacruz.com). These writings will also be available for review at the Zoning Administrator meeting in the public review binder at the rear of the Council Chambers.

Appeals must be received by the Planning Department within ten (10) calendar days following the date of the action from which such appeal is being taken. An appeal must be accompanied by a five hundred fourteen dollar (\$514) filing fee, unless the item involves a Coastal Permit that is appealable to the California Coastal Commission, 725 Front St., Suite 300, Santa Cruz, CA 95060 in which case there is no fee.

The City of Santa Cruz does not discriminate against persons with disabilities. Out of consideration for people with chemical sensitivities, we ask that you attend fragrance free. Upon request, the agenda can be provided in a format to accommodate special needs. Additionally, if you wish to attend this public meeting and will require assistance such as an interpreter for American Sign Language, Spanish, or other special equipment, please call the City Clerk's Department at 420-5030 at least five days in advance so that we can arrange for such special assistance, or email [CityClerk@cityofsantacruz.com](mailto:CityClerk@cityofsantacruz.com). The Cal-Relay system number: 1-800-735-2922.



## **Exhibit 2**

Exhibit 9  
A-3-STC-16-0016  
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DEPARTMENT OF PLANNING  
AND COMMUNITY DEVELOPMENT

MEMORANDUM

DATE: January 22, 2015  
TO: Current Planners  
FROM: Eric Marlatt, Principal Planner  
SUBJECT: **Alteration/Remodel vs. Reconstruction of a Nonconforming Structure**

---

Issue:

At what point does voluntary work to a nonconforming structure become "reconstruction" that would require a Residential Demolition Permit and/or that would cause the structure to lose its nonconforming rights?

Applicable Code Sections:

Chapter 24.18 of the City Code provides specific requirements for nonconforming structures and nonconforming uses. In the case of a nonconforming structure that does not contain a nonconforming use, only Sections 24.18.030 and 24.18.040 are applicable.

City Code Section 24.18.030 allows for a nonconforming structure to be "enlarged or structurally altered, provided that it is not made more nonconforming."

City Code Section 24.18.040 relates to nonconforming structures that are damaged or destroyed by fire, flood, wind, earthquake, or other disaster. This section allows for the reconstruction of a nonconforming structure that is damaged to more than fifty percent of its value with approval of a Reconstruction Permit (Chapter 24.08, Part 20).

City Code Section 24.08.1310 et seq. requires the attainment of a Residential Demolition/Conversion Authorization Permit prior to the demolition or conversion of a living unit.

Unfortunately, the Demolition definition found in Section 24.22.260 provides little, if any guidance: "Destruction of all or part of a structure."

Interpretation:

For the purposes of determining if a Residential Demolition Permit is required, it was determined that it makes sense to use the same fifty percent threshold as Section 24.18.040 when distinguishing between voluntary (aka. does not qualify under 24.18.040) "alterations" and

Date: January 2015

Subject: Alterations vs. Reconstruction of a Nonconforming Structure

Page 2 of 2

"reconstruction", and that the fifty percent maximum alteration relates to alterations to the perimeter walls of the structure and is exclusive of roof or foundation alterations or repairs.

Per Zoning Code, a nonconforming structure can be altered or expanded provided it is not made more nonconforming. If the expansion or alteration does not conform to current zoning code requirements (ex. extending a wall within a setback with a Design Permit), it is not made conforming by way of section 24.18.030, rather, it would remain nonconforming and subject to the requirements in the nonconforming sections of the zoning code, unless a Variance is obtained.

Process:

In order to make the determination of whether a demolition permit is required and whether a structure can maintain its nonconforming status, the applicant needs to provide the existing total lineal feet of the perimeter walls of the entire structure and the total lineal feet of the perimeter walls to be altered or reconstructed. Accompanying to-scale drawings distinguishing the exterior walls to remain from those to be demolished also need to be provided.

- If less than 50-percent of the exterior walls are demolished, a Residential Demolition Permit shall not be required and/or the structure can maintain its nonconforming status.
- If greater than 50-percent alteration, the work shall require a Residential Demolition Permit and all current site standards must be met, as this constitutes reconstruction, unless appropriate Variances are approved.

**\*\*Note:** Even if all proposed work is to occur on the nonconforming portion of the house, the house may maintain its nonconforming status if the work constitutes less than 50% of the perimeter wall length for the entire structure.



**BRISCOE IVESTER & BAZEL LLP**

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*David M. Ivester*  
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**By Electronic and Regular Mail**

September 22, 2016

Sharif Traylor  
Enforcement Officer  
California Coastal Commission  
Central Coast District  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Re: Shigefumi and Amy Honjo, 1307 West Cliff Drive, City of Santa Cruz;  
Violation File No. V-3-15-0124

Dear Mr. Traylor:

**INTRODUCTION**

I write on behalf of Shigefumi and Amy Honjo (the “Honjos”) in response to your letter of February 23, 2016, characterizing a portion of the riprap revetment on their property at 1307 West Cliff Drive (“Property”) as “unpermitted” and calling for them to resolve a violation of the Coastal Act.

While we readily agree that the riprap revetment constitutes “development” within the meaning of the Coastal Act, we disagree with the characterization of the revetment as unpermitted. As explained below, the Coastal Commission permitted the revetment in 1983 and 1992, and both the Honjos and their predecessors have relied on the Commission’s authorization in maintaining the revetment and the house and cottage on the Property.

In any event, as also explained below, even if the revetment were unpermitted, the time to bring an action to press any such claim has long since expired.

We ask that the Commission staff review the circumstances and confirm that the revetment is permitted and may be maintained by the Honjos.

## BACKGROUND

The City of Santa Cruz (“City”) constructed the West Cliff Drive bike path in 1977. In support of this project, Larimore Cummins, then owner of the Property at 1307 West Cliff Drive, donated a 100-foot strip of the property to the City.

Around 1980, to help maintain its newly built path, the City placed riprap to the west of the Property. The City placed this riprap under the overhanging bluff and extended it onto the beach. Unfortunately, the riprap led to increased erosion of the bluff along the waterward edge of the Property, particularly on the bluff’s concave westerly section.

In the winter of 1983, strong winter storms and heavy surf hit the California coast. Santa Cruz, and West Cliff Drive specifically, saw significant coastal bluff erosion. The Property was no exception. Concerned by the impacts of this erosion on his residence, Dr. Cummins contacted Les Strnad of the Coastal Commission to propose a construction project that would help limit bluff erosion. Mr. Strnad, who at the time was Supervisor of Permits for the Central Coast District of the Commission, took an active role in the project and coordinated aspects of it with the contractor (Granite Construction Company), the engineer, and the City. After an on-site meeting, Mr. Strnad agreed that Dr. Cummins should have a shoreline protection device installed as soon as the weather allowed. Dr. Cummins and Mr. Strnad then met with City staff to discuss the project. At that meeting, the Commission, through Mr. Strnad, approved the proposed work on an emergency basis. The City likewise authorized the work. (Exs. 1, 2, 3, 4.)

Construction began in 1983 with placement of riprap and gabion baskets. Granite Construction Company, which did the work, completed most of the construction in 1983. Because the crane being used to place the riprap was not large enough to reach portions of the riprap project as shown in the engineering plans, Dr. Cummins agreed to have Granite Construction complete the job the next time it was in the area with a large enough crane. In 1992, Granite Construction returned to West Cliff Drive to complete some work for the City, and informed Dr. Cummins it then had a crane large enough to finish the riprap project.

Dr. Cummins then sought further approval from the City and Commission to complete his project. He sent a letter (Ex. 5) to the City and Commission explaining “most of the rip rap [was] placed as planned” in 1983, but “the outermost rip rap could not be placed because of the size of the only available crane.” Noting that Granite Construction was doing a project on West Cliff Drive for the City, he said he “would like to have them complete [his] project.” He added that his engineer had “looked over the current state of the project and agrees that his original plan remains appropriate.” His engineer, Don Ifland, also sent a letter (Ex. 6) to the City and

Commission explaining that the “northerly portion of the riprap [was] installed” in 1983 in keeping with plans they had prepared and submitted at that time, but “[b]ecause of the limited reach of the crane used to place the riprap, the southerly portion of the riprap could not be completed at that time.” He opined that “the project should be completed per our original plans.”

On November 20, 1992, the Commission’s Executive Director issued Administrative Permit No. 3-92-78 to approve the project. (Ex. 7.) Les Strnad, then Chief of Permits, signed the permit on behalf of the Executive Director. The permit described the approved project much as Dr. Cummins and his engineer had proposed it with respect to completion of the riprap seawall: “To install 300 cu. yds. of rip-rap to an existing  $\pm$ 1400 cu. yd. rip-rap seawall as maintenance and repair.” The permit prescribed that all work shall conform to “specifications of engineered drawings prepared by Ifland & Associates dated 7/20/83.” That drawing, a single sheet showing the entire riprap project with overlapping handwritten circles and notations generally depicting what was “completed in 1983” and the “remainder to be completed,” was stamped by the Commission as “Approved.” (Ex. 8.)

Dr. Cummins and Granite Construction then proceeded to complete the riprap revetment in keeping with the permit. The revetment has since served its purpose of protecting the bluff and the improvements on the Property landward of the bluff.

The Honjos purchased the Property from Dr. Cummins and, in 2015, proposed remodeling the house. The City’s approval of that proposal was appealed to the Commission.

The Honjos then received a letter dated February 23, 2016, from you characterizing the riprap revetment as unpermitted development and calling on them to resolve a violation of the Coastal Act. Whether this letter was somehow prompted by or otherwise related to the appeal of the remodel decision, we do not know. In the letter, you noted that placement of riprap to form a revetment is “development” within the meaning of the Coastal Act. (We agree with that much.) You also stated that “[w]e have searched our records and have not found a coastal development permit (“CDP”) issued by the City or the Commission that authorizes the above-described development.” You noted that an application submitted in 1983 for placement of riprap had been deemed incomplete, so no permit decision was made. You also noted that CDP No. 3-92-78 was approved and issued to Dr. Cummins in 1992, but said—without explanation—that it was for “the placement of an *additional* 300 cubic yards of riprap to an existing  $\pm$  1,400 cubic yard riprap revetment on the subject property downcoast of where the existing (unpermitted) riprap was located.” (Emphasis in original.)



## DISCUSSION

### I. The Commission Authorized The Riprap Revetment in 1983

The Coastal Act excuses typical permitting procedure when emergency conditions exist. (Pub. Resources Code §§ 30611, 30624; Cal. Code Reg., tit. 14, §§ 13136 et seq.) During an emergency, permits may be issued without a hearing, without an opportunity for the public to participate, or without an opportunity for the Commission to fully consider the facts and circumstances of the case. (Pub. Resources Code § 30624; Cal. Code Reg., tit. 14, §§ 13140 et seq.) Moreover, there is no requirement that the permit be in writing, and, as past Commission decisions illustrate, verbal authorization is often appropriate during emergencies. (See e.g., Coastal Commission Appeal No. A-5-LGB-14-0037 (Koga Properties) at 23 (“The rock revetment was constructed in 1988 with a verbal emergency authorization from the Executive Director.”).)

Here, the Commission, through its Supervisor of Permits, Mr. Strnad, verbally authorized the work based on emergency conditions in 1983—as did the City. Because verbal authorization is sufficient, and because none of the procedures for obtaining a standard CDP were required under the circumstances, the Commission correctly authorized the riprap revetment in 1983.

### II. The Commission Authorized The Riprap Revetment in 1992

In any event, the Commission authorized the riprap revetment in 1992 in CDP No. 3-92-78. In response to Dr. Cummins’s proposal to “complete [his] project” “per [his engineer’s] original plans,” the CDP authorized him “[t]o install 300 cu. yds. of rip-rap to an existing ±1400 cu. yd. rip-rap seawall as maintenance and repair” and, in doing so, “conform to . . . specifications of engineered drawings prepared by [his engineer] dated 7/20/83,” which the Commission expressly “approved.” (Ex. 8.)

No where did the CDP say that it authorized only an *additional* 300 cubic yards of riprap somehow distinct from the then existing riprap revetment. Nor did it speak about placing riprap downcoast or somehow otherwise apart from the existing riprap. Rather it said that the riprap would be installed “to” an existing riprap seawall. That indeed is exactly what occurred. The riprap installed in 1992 was placed not only next to the 1983 riprap to extend the revetment, but also on the 1983 riprap to form two layers of riprap—with the 1983 riprap deep behind the 1992 riprap. (Ex. 9.) No where did the CDP say that the “existing” riprap revetment was unpermitted. Rather it said that the riprap would be installed to the “existing” riprap seawall “as maintenance and repair” of that seawall.

It bears noting in this regard that the CDP was issued as an “administrative permit” under Public Resources Code section 30624, which authorizes the Executive Director to issue such permits for, *inter alia*, “improvements to any existing structure.” The Commission cannot in keeping with this section somehow authorize improvements to a structure while at the same time disavowing the structure’s authorization. Why, for instance, authorize improvement of a house, say by replacement of the roof, only to claim the house is unpermitted and call for its removal? Certainly, it should not be supposed that in authorizing the Executive Director to issue administrative permits for improvements to any “existing” structure, the Legislature intended to enable the Executive Director to facilitate improvement of “unpermitted” structures while somehow also maintaining that, once improved as authorized, such structures would nonetheless be unpermitted.

In several respects additional to those noted above, CDP No. 3-92-78 confirms that its authorization encompasses the existing riprap revetment as maintained and repaired in 1992. First, the Executive Director made a finding in the CDP characterizing the project as “[t]he seawall repair,” thus encompassing the repair of the then existing seawall and not merely the placement of some additional material next to the seawall. (Ex. 7, p. 3.) Second, the CDP also specified that the work must “conform to Santa Cruz Grading Permit No. 131.” (*Id.*) That permit described the project to encompass the entirety of the riprap seawall and both phases of its construction: “Extension of seawall protection (riprap placement) of West Cliff Dr. (Phase I & II) currently under const. Expand project to protect above noted address. (Based on OK from Coastal Comm.)” (Ex. 10.) The stated purpose “to protect” the Property at 1307 West Cliff Drive naturally can only be served by the project in its entirety, both phases of construction of the riprap revetment, as set forth in the grading permit. Third, the Executive Director determined in the CDP that the project is a category of development that qualifies for an administrative permit under Public Resources Code section 30264, which authorizes such permits for “improvements to any existing structure,” as discussed above. (Ex. 7, p. 2.) Fourth, the Executive Director also determined that the project “is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 [and] will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.” (*Id.*) The Executive Director obviously considered the existing riprap revetment to be in conformity with the Coastal Act when he issued the CDP to maintain and repair it, otherwise he would not and could not have made that determination.

To the extent there could be any doubt on this score, Les Strnad, the Commission’s Chief of Permits who signed CDP No. 3-92-78 on behalf of the Executive Director, has dispelled it. Mr. Strnad, who has since retired from the Commission staff, has confirmed that he “understood and intended [CDP No. 3-92-78] to authorize the entire rip rap revetment as installed in 1983 and

repaired and maintained by the work in 1992.” (Ex. 2.) Mr. Strand also “personally signed the Ifland plans for the [permit] showing both phases of construction, and had the plans stamped ‘approved’, to signify written approval of the entire rip rap revetment, (the 1983 emergency work and the maintenance in 1992 proposed work).” (*Id.*)

In keeping with this understanding, for more than two decades, the City, Dr. Cummins and then the Honjos, and (until February 23, 2016) the Commission treated the riprap revetment at the Property as permitted and acted accordingly.

### **III. The Time To Bring An Action Claiming Installation Of The Riprap Revetment Violated The Coastal Act Has Long Since Expired**

#### **A. Statute of Limitations**

The period of limitations prescribed by statute for bringing an action claiming violation of the Coastal Act is, at most, three years from the date of the alleged violation or, in some instances, from the date of the Commission’s discovery of the alleged violation. The Coastal Act provides that actions pursuant to section 30805 or 30822 to recover civil fines or penalties under the Act must be commenced “not later than three years from the date on which the cause of action for the recovery is known or should have been known.” (Pub. Resources Code § 30805.5.) To the extent that the Coastal Act does not specify periods of limitations for actions under other sections of the Act, the pertinent period of limitation is provided by the general statutes of limitations. (*G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 276.) Code of Civil Procedure section 340(a) provides a one-year period of limitations for actions “upon a statute for a penalty or forfeiture.” Code of Civil Procedure section 338(a) provides a three-year period of limitations for actions “upon a liability created by a statute, other than a penalty or forfeiture.” The applicable statutes of limitations thus provide at most a three-year period for the Commission to bring an action for violation of the Coastal Act.

Statutes of limitations generally begin to run when the cause of action accrues. (Code Civ. Proc. § 312.) A cause of action generally accrues when, under the substantive law, the wrongful act is done or the wrongful result occurs, and the consequent liability arises. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397; *Myers v. Eastwood Care Center, Inc.* (1982) 31 Cal.3d 628, 634.) An action upon liability created by statute generally accrues when an action may be maintained by the administrative agency charged with enforcement of the law (*Myers*, 31 Cal.3d at 635), and the three-year limitations period under Code of Civil Procedure section 338(a) “runs . . . from the first time the challenge could be brought, i.e., the initial accrual of the cause of action” (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 774).



In certain circumstances prescribed by the Legislature or recognized by courts, the accrual of certain causes of action may be postponed “until the plaintiff discovers, or has reason to discover, the cause of action.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) As noted above, the Legislature did just that with respect to actions pursuant to Public Resources Code section 30805 or 30822.

The Legislature or courts also may regard certain violations to be “continuing” or to “continually accrue,” with the effect generally that the period of limitations for such violations continually begins anew. (See *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1197.) Neither the Legislature nor the courts have determined specific violations of the Coastal Act to be of this character. Indeed, at least one court that specifically considered the argument that an alleged violation of the Coastal Act’s provisions governing development is “akin to the tort of nuisance—of a continuous and recurring nature such that ‘the statute recommences to run for each day that the violation exists’” declared itself “[u]npersuaded” and ruled that an action predicated on such a violation accrues when the act occurs that gives rise to the claim and the action may be maintained by the administrative agency charged with enforcement of the law. (*California Coastal Com. v. Alves* (1986) 176 Cal.App.3d 952, 222 Cal.Rptr. 572, 583, 1986 Cal. App. LEXIS 2497 (nonpub. opn.); Ex. 11, p. 9.) The Legislature has specified a maximum and minimum amount a court may award for civil liability for certain intentional and knowing violations of the Coastal Act in terms of dollars “per day for each day in which the violation persists.” (Pub. Resources Code § 30820(b); see also Pub. Resources Code §§ 30821 & 30821.6.) Specifying how to calculate an amount, though, is different, fundamentally different, than providing that a violation continually accrues. An action to recover penalties as calculated under section 30820(b) must still be brought within the appropriate limitations period.

Here, under the general rule, the period of limitations began to run in 1983 when the placement of riprap occurred and the Commission first could have challenged it as a violation of the Coastal Act, and the period expired three years later—in 1986.

Even if the accrual of certain causes of action, such as those under Public Resources Code section 30805 or 30822, was postponed until the cause of action is known or should have been known, the period of limitations has long since run. The Commission, through its Supervisor of Permits Les Strnad, was well aware of the placement of the riprap in 1983 since he authorized it. To the extent that the Commission may have then considered the riprap authorized, but thought that some further authorization was needed in the form of a written CDP or the like, the Commission also knew that it had not provided any such authorization—particularly since the Commission determined on August 26, 1983, that Dr. Cummins’s application for such a CDP was incomplete and could not be filed or processed until the City

completed its review under the California Environmental Quality Act (“CEQA”). (Ex. 12.) Thus, even if accrual of the cause of action was postponed until discovery, the period of limitations began to run no later than August 26, 1983, and expired three years later on August 26, 1986.

Even if it is somehow supposed that the Commission did not know in 1983 of the placement of riprap on the Property that year, the Commission obviously knew of it no later than November 20, 1992, when it issued Administrative Permit No. 3-92-78 depicting the “existing” riprap revetment “completed in 1983” which the Commission staff now characterizes as unpermitted. Even by that reckoning, the period of limitations would have expired on November 20, 1995—over two decades ago.

### **B. Estoppel and Laches**

For years the Commission and its staff acted in keeping with the understanding—and even affirmatively stated—that the 1983 work was authorized and, moreover, the 1992 permit approved the 1983 work. To reverse course after all these years would be contrary to two equitable doctrines: estoppel and laches. These doctrines apply here and bar any untimely action by the Commission.

“Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be [sic] acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.” (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.) The government is not immune from the doctrine, and it may be applied “where justice and right require it.” (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 493.)

Here, all elements of estoppel are present. First, the Commission was apprised of the facts when it authorized the 1983 work on an emergency basis and when it issued the 1992 permit based on the same engineering plan as the 1983 work. The Commission cannot now claim, in good faith, that it did not know of the 1983 work. Mr. Strnad’s intimate knowledge of the 1983 construction belies any such claims. Second, the Commission intended the property owner to take action based on its regulatory action and inaction, or at minimum it was reasonable to believe the Commission so intended. By authorizing the 1983 work and issuing the 1992 permit, and not then requesting any other permit or alleging any violation or threatening to take any enforcement action, it is reasonable to conclude the Commission intended the property owner rely on the permit as authorization for the entire project or, at the very least, signaled its

Sharif Traylor

September 22, 2016

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acquiescence to the 1983 emergency work. Third, no property owners knew of the Commission's new or contrary position until 2016, when Commission staff sent the Honjos a letter characterizing the 1983 work as a violation. Finally, because both past and present property owners understood the 1992 permit to be for the entire project, they relied on the Commission's representations to their detriment. The property owners would have sought additional permits in the 1990s had the Commission not asserted it was permitting both phases of riprap construction. Accordingly, the Commission is estopped from bringing any enforcement action.

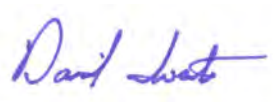
Likewise, the doctrine of laches applies here. "Laches is an equitable defense based on the principle that those who neglect their rights may be barred from obtaining relief in equity. The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1274, internal citations and quotations omitted.) The Commission both acquiesced to what it now claims is unpermitted development and unreasonably delayed enforcement. The Commission is therefore barred from seeking equitable relief by the doctrine of laches.

### CONCLUSION

For the foregoing reasons, we ask that the Commission confirm that the revetment is permitted and may be maintained by the Honjos.

Sincerely,

BRISCOE IVESTER & BAZEL LLP



David Ivester



## **EXHIBIT 1**



809 Center Street • Room 206 • Santa Cruz, CA 95060 • [www.cityofsantacruz.com](http://www.cityofsantacruz.com)  
JULIANA REBAGLIATI, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

September 14, 2016

Ryan Moroney  
California Coastal Commission  
725 Front St., Suite 300  
Santa Cruz, CA 95060

**RE: 1307 West Cliff Drive – CP15-0157**

Dear Mr. Moroney:

This letter is to clarify our position on the status of the riprap in relationship to 1307 West Cliff Drive. Staff has reviewed the available documents from the Coastal Commission, as well as the City's records. While it is not completely clear what happened in 1983, it appears that a Coastal Permit (3-83-152) was applied for, but was then returned with a refund with direction for the City to complete an environmental review. However, the Local Agency Review Form that was filled out by the City Deputy Zoning Administrator at the time indicated that no review was required per City Zoning Code Section 24.16.140 which read in 1983 as follows:

24.16.140 Safety Structures

*Warning signs, barricades, retaining walls, erosion control facilities, or other safety devices or structures built or installed by or under the direction of, or with the special approval of the City, in furtherance of the public safety, shall not be subject to the regulations set forth in the OF-R District.*

While I have not been able to find any further records specific to this property and the riprap, my understanding is that the City was also in the process of placing riprap along West Cliff Drive at the time, and that the riprap along 1307 West Cliff was likely installed as part of the overall City project.

Regardless, the fact that the Coastal Commission issued a permit (CDP 3-92-78) in 1992 would suggest that whatever work was performed in 1983 was recognized and not in violation. Based on this information, and the fact that this supposed violation occurred over 30 years ago, it is staff's opinion that the property is in conformance and has properly obtained the necessary permits. Please feel free to contact me at (831) 420-5141 or [rbane@cityofsantacruz.com](mailto:rbane@cityofsantacruz.com) if you have any questions.

Best regards,

Ryan Bane  
Senior Planner

## **EXHIBIT 2**



## Max Rollens

---

**From:** Les Strnad <lestrnad@att.net>  
**Sent:** Wednesday, September 21, 2016 2:31 PM  
**To:** Max Rollens  
**Cc:** Deidre Hamilton  
**Subject:** Re: 1307 West Cliff Drive, Santa Cruz

Max as you requested I have commented on the summary of our discussion and to the best of my knowledge this represents what I believe to be the facts that occurred in 1983.

If I can be of further help please give me a call.

In friendship,

Les Strnad, CZMA

---

**From:** Max Rollens <mrollens@briscoelaw.net>  
**To:** Les Strnad <lestrnad@att.net>  
**Sent:** Wednesday, September 21, 2016 1:07 PM  
**Subject:** 1307 West Cliff Drive, Santa Cruz

Dear Les,

Thank you for speaking with me on Monday, September 19, 2016, about the property at 1307 West Cliff Drive. As we discussed, I write to ask for your help in confirming some pertinent facts, particularly that in your role on the Commission staff, you authorized the rip rap revetment in 1983 based on emergency conditions and again authorized the revetment in 1992 (encompassing both phases of construction) by administrative permit. We understand the details **based on our conversation** to be substantially as follows:

1. In 1983, strong winter storms in California caused significant bluff erosion at 1307 West Cliff Drive **and along numerous areas of the central coast.**
2. You recall this **residential** property specifically because of its location westward of West Cliff Drive.
3. Granite Construction was constructing **an authorized emergency** rip rap revetment for the City of Santa Cruz adjacent to the 1307 West Cliff Drive property **and along a number of sites on West Cliff Drive**
4. Dr. Cummins, the property owner at the time, requested Granite Construction also complete **emergency** work at his property while the equipment was nearby.
5. In 1983, you authorized the first phase of construction at 1307 West Cliff Drive on an emergency **coastal permit.**
6. **Some emergency construction was completed during the storm period in 1983, but could not be fully completed without a larger crane. That crane became available in 1992.**
7. In 1992, **the California Coastal Commission approved an** Administrative Permit No. 3-92-78 to approve the project **and as required by the Emergency Permit issued during the 1983 storm event,** in doing so, understood and intended the permit to authorize the entire rip rap revetment as installed in 1983 and repaired and maintained by the work in 1992. You **personally** signed the Ifland plans **for the CDP NO. 3-92-78** showing both phases of construction, and had the plans stamped "approved", to

signify written approval of the entire rip rap revetment,( the 1983 emergency work and the maintenance in 1992 proposed work).

To the best of my recollection the seven summary points above, as revised, are the facts in my official capacity as Supervisor of Regulation for the Central District of the California Coastal Commission in 1983.

Les Strnad, CZMA.

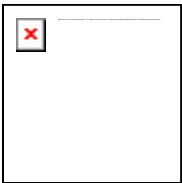
.

We very much appreciate your assistance in confirming the foregoing. All we need is a simple response such as “yes, this is my recollection”—or if your recollection is different, correcting where necessary.

Thanks very much for your time. If you have any questions please feel free to respond to this email or call me at (415) 402-2716. There is some urgency, as I mentioned, because we need to respond to Commission staff soon.

Best,

Max



**MAX ROLLENS**

155 Sansome Street, Seventh Floor

San Francisco, California 94104

Office: (415) 402-2700 Direct: (415) 402-2716

### **EXHIBIT 3**



## Margaret Howlett

---

**From:** David Ivester  
**Sent:** Monday, April 04, 2016 3:41 PM  
**To:** Margaret Howlett  
**Cc:** Max Rollens  
**Subject:** FW: 1307 West Cliff Drive

S Drive

DAVID IVESTER

---

**From:** Deidre Hamilton [mailto:deidre@hamiltonswift.com]  
**Sent:** Thursday, March 17, 2016 12:20 PM  
**To:** David Ivester  
**Subject:** FW: 1307 West Cliff Drive

Dr. Larimore Cummins is the previous owner.  
Deidre

Deidre Hamilton  
[deidre@hamiltonswift.com](mailto:deidre@hamiltonswift.com)



500 Chestnut St, Suite 100  
Santa Cruz, CA 95060  
831.459.9992 | Fax 831.459.9998  
[www.hamiltonswift.com](http://www.hamiltonswift.com)



Please consider the environment before printing this email.

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**From:** Larimore Cummins [mailto:ljcummins@earthlink.net]  
**Sent:** Tuesday, March 08, 2016 5:16 AM  
**To:** [deidre@hamiltonswift.com](mailto:deidre@hamiltonswift.com)  
**Cc:** [dianne@lifesabeach.com](mailto:dianne@lifesabeach.com)  
**Subject:** 1307 West Cliff Drive

Deidre,

Sorry for the length of this email, but am working on a mobile phone with limited ability to attach documents.

What follows are some recollections related to our anti-erosion project at 1307 West Cliff Drive. These recollections are as accurate as my memory will support. Lesser details might change as I revisit my records upon returning home from vacation, but the higher level scenario is accurate.

As the property owner I was responsible for a construction project accomplished for the purpose of limiting erosion of the coastal bluff at 1307 West Cliff, Santa Cruz, CA. This project was initiated during the winter storms of 1983 and completed in 1992. Construction was done by Granite Construction in accordance with a 1983 design created by Ifland Engineering. The project was accomplished over eight years in two phases; the first in 1983 and the second in 1992. The reason for the two phases was that the crane used in 1983 was too small to complete the Ifland plan. Once the small crane had accomplished what it was able to do, we agreed to resume the project when Granite was working in the area with larger equipment, as they had many such projects for the City in recent prior years. When Granite began work on their next large City project in 1992 I requested that they finish my project. Granite indicated that they would do so pending approval by the City of Santa Cruz and the Coastal Commission. Both of those organizations were contacted and at their request the engineering plan was reviewed by Ifland to confirm that the design remained appropriate. This

determinaton was made by Ifland and the project was completed. Both phases on this project were done in conjunction with anti-erosion and restoration projects of the City of Santa Cruz.

I purchased the property at this location in 1975. The coastal bluff generally faces south-east in this area and therefore my reference to east and west refers to the directions of left and right respectively as one stands on shore looking out to sea.

The home consists of a two-story house and a separate cottage located a few feet to the west of the house. The coastal bluff in this area consists of a firm base of sedimentary rock that is about 15 feet high. Above that is a layer of top of which top soil and clay that is roughly 10 feet thick. Beach sand comes and goes seasonally. The coastal bluff in front of the home is generally configured with concavity shoreward in its westerly section and convexity seaward in its easterly section. The concavity to the west extended beyond my property to include a section of public beach. In 1975 within this general concavity on the west were two shallow coves, the cove on public property was a few feet to the west of our cove. The City of Santa Cruz built the West Cliff Drive Bike Path in approximately 1977. In support of the bike path, we donated a portion of our property along the West Cliff Drive to accommodate the bike path. We did not ask nor receive payment from the City for this 100 foot strip of property.

As part of its ongoing anti-erosion efforts to protect the bike path and road, the City of Santa Cruz placed rip rap at the base of the bluff and in the cove immediately to the west of my property in 1980 or '81. Prior to 1980 this cove can be seen to contain only a sandy beach on many photographs such as post cards and various historical internet sites. The City's rip rap placement was located both under the overhanging bluff and extended out onto the beach. This placement involved rather large boulders of a slightly different character (lots of white stone) than seen at other locations along the bluff. Unfortunately, this placement of rip rap resulted in significant additional erosive force on my bluff, particularly on its concave westerly section. This phenomenon was less well known at the time, but rapidly became obvious to me by personal observation. It is now widely acknowledge to occur as is mentioned at the top of page 2 in Coastal's Feb 23 letter: "revetment will increase wave reflection, thus accelerating beach erosion". That is exactly what happened to my property as a result of the City's 1980 rip rap placement, presumably with the Coastal Commission approval. The asymmetry of surf action was very much apparent during conditions of high tides and large surf. Prior to the City's rip rap the surge of sea water within the western cove was symmetric in the sense that the direction of the water was generally perpendicular to shore when going toward shore on the way in and toward the sea on the way out. The City's rip rap caused a build up of water in the westerly section of the concavity which then flowed easterly toward my property. This resulted in the "effective tide" at my coastal bluff being higher than the "natural tide". During the severe winter storms and high tides of 1983, this phenomenon added an additional foot or two to the effective tide at my property. The natural tides at the time were in excess of six feet. As a result we lost some topsoil and a few pieces of bluff base.

During the storms of 1983 I contacted Les Strnad as I knew of his role in the Coastal Commission through mutual friends. He held a senior management role in our region of the Coastal Commission. My recollection is that he was the administrative director of the central coast region at that early phase of the Coastal Commission. I called Les and he agreed to meet at my home to discuss what could be done to protect my property. At that meeting and throughout the process thereafter, Les provided considerable personal attention to my project. He communicated and coordinated several aspects of my project with Granite, Ifland and the City as he was in daily dialog with them regarding other matters. His efforts and expertise in this regard were very much appreciated at the time and have remained so for many years.

The situation was hectic all along the coast during the storms of 1983. Les and a fellow from Granite met with me at my home on West Cliff Drive. Les had just returned from a trip to Half Moon Bay to deal with ongoing damage to a waterfront steak house restaurant in that area. I cannot recall the name of the person from Granite with certainty, but I think his first name was George. Other names at Granite that come to mind as participating later in the project are Norm, Tony and Chuck Michaelis. At the on-site meeting, it was determined that nothing could be done in terms of placing rip rap during the storms, although some sheets of plastic visqueen were required to stabilize top soil at the bluff's edge. Both Les and Granite agreed that erosion protection at the base of the bluff should be installed as soon as possible once the weather settled down. This would also allow sufficient time to have a civil engineer render an opinion and draft a plan. Ifland Engineering was recommended for that purpose.

Les also suggested and arranged a meeting at the Santa Cruz City offices to discuss the project. At this meeting I brought up the issue of erosion on my cliff being accelerated by the City's nearby rip rap placement in 1980 or '81. The representative for the City at this meeting was the same person managing the ongoing City's anti-erosion projects at several locations along West Cliff Drive. When I expressed my concern about the negative impact on my property from City's rip rap, the City representative held up his hands and said "Let's not go there. If the Coastal Commission doesn't have a problem with your project, it is fine with us. Coastal has the lead on this". My point here is that my concern regarding the negative impact of the City's adjacent rip rap was understood and acknowledged, if not formally validated. From my perspective this conversation represented a "handshake agreement" in which I would not pursue damages against the City. If I recall correctly, we actually did shake hands. And of course I took no further action.

In past recollections of events I have mistakenly recalled this meeting as occurring in 1992, but it was definitely in 1983 as the issue of the 1980 City rip rap was very prominent in my thinking at that time. It became less so once the City and Coastal gave the "go ahead" to protect my property. In past communications regarding this project, I have mentioned an "emergency permit" related to the 1983 storms. In doing so I was referring collectively to the events as described here. It is my understanding that verbal approval to move forward upon submission of an application was the standard procedure in response to events in those days. It was my understanding at the time (and remains so) that Granite moved forward with construction based on having initial paperwork in place and Les' approval as representative of Coastal's approval.

Based on Coastal's Feb 23 letter, it appears that the application submitted by Granite on my behalf was returned without retention of a copy. I don't recall receiving that document, so maybe it was sent to Granite. If it was mailed to me I would have forwarded it to Granite. So hopefully it is in their files. I do recall in the 1992 time frame Les told me that additional information was needed from Granite related to the 1983 work. He had spoken to Granite about the matter and asked me to do the same, which I did. Upon issuance of the permit, I assumed that Coastal had received the information that it needed.

Based on Coastal's Feb 23 letter, it appears that there is scant documentation in their files regarding the 1983 phase of my project. Despite the scarcity of documentation, I am 100% certain that we had the approval of both the City and the Coastal Commission to proceed prior to commencement of work in 1983 based on the events as described here. We can also be assured that an esteemed organization like Granite Construction would not have moved forward had they not shared the same perception.

It has been my understanding (and remains my opinion) that the sign-off for the 1992 work was for the entire project. Specifically in this regard, the Coastal Commission permit issued in 1992 was signed by Les Strnad, who was very familiar with the 1983 work. The 1992 permit was issued in response to an application that explicitly requested approval to finish the ongoing project. In written support of this application, Ifland Engineering explicitly recommended that the project

be "finished". Wording of the 1992 permit required that all work be in compliance with the engineering plans that had been drawn up and partially executed in 1983. The 1992 permit also describes the 1400+ cubic yards of rip rap that were required to complete the Island plan, much of which had not yet been placed at the time of the 1992 application. This was a single construction project accomplished in two phases with delays in both physical and administrative activity for reasons that have been well documented. Several City erosion control projects along West Cliff Drive have been similarly phased for various reasons.

On a final note regarding the Feb 23 letter, public access to the beach in this area was enhanced rather than inhibited by our rip rap. Previously the public had to descend a 7 foot vertical wall to get to the beach and climb the wall to exit. The beach in front of our property experienced more public use after the rip rap was in place because it was easier to scramble over the rip rap than scale the wall.

Regards,  
Larimore Cummins



**EXHIBIT 4**

## Max Rollens

---

**From:** Deidre Hamilton <deidre@hamiltonswift.com>  
**Sent:** Thursday, September 01, 2016 12:54 PM  
**To:** David Ivester; Max Rollens  
**Subject:** FW: West Cliff Drive

FYI  
Deidre

Deidre Hamilton  
[deidre@hamiltonswift.com](mailto:deidre@hamiltonswift.com)



500 Chestnut St, Suite 100  
Santa Cruz, CA 95060  
831.459.9992 | Fax 831.459.9998  
[www.hamiltonswift.com](http://www.hamiltonswift.com)



Please consider the environment before printing this email.

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**From:** Larimore Cummins [mailto:[ljcummins@earthlink.net](mailto:ljcummins@earthlink.net)]  
**Sent:** Monday, February 29, 2016 7:30 AM  
**To:** Deidre Hamilton  
**Cc:** Dianne Periera  
**Subject:** Re: West Cliff Drive

Ms Hamilton,

Based on my recent email to you Dianne Pereira has pointed out to me that I mistakenly identified your note as coming from Dee Murray, a land use consultant employed by the Honjo's with whom I have had prior discussions regarding the anti-erosion project at 1307 West Cliff drive. Such was the source of my reference to "our previous discussion". Please accept my apologies for that misidentification and for joining your conversation without introduction.

However, having done so I would like to add some context and ask for guidance as how I can be of assistance in this matter. Since my note to you, I have read the CCC letter of Feb 23rd more closely and see that their description is not consistent with what has been my perception of the scope on the 1992 permit. Granite Construction was handling the paperwork on the project and perhaps my understanding of what occurred in that regard is inaccurate.

However I do have a reasonably clear recollection of the physical aspects of the project and a keen understanding of why the project was required. Here is a brief overview to which I can add considerable detail as needed: As the property owner I was responsible for a construction project accomplished for the purpose of limiting erosion of the coastal bluff at 1307 West Cliff. This project was initiated during the winter storms of 1983 and completed in 1992. Construction was done by Granite Construction in accordance with a 1983 design created by Ifland Engineering. The project was accomplished over eight years in two phases, the first of which was in 1983 and the second in 1992. The reason for the two phases was that crane used in 1983 was too small to complete the Ifland plan. Once the small crane had accomplished what it able to do we agreed to resume the project when Granite was working in the area with larger equipment, as they were doing many such projects for the City during those years. When Granite began work on another such project in 1992 using larger equipment I requested that they finish my project. Granite indicated that they would do so pending approval by the City of Santa Cruz and the Coastal Commission. Both of those organizations were contacted and at their request the engineering plan was reviewed by Ifland to confirm that the design remained appropriate. This determinaton was made by Ifland and the project was completed.

I remain ready and willing to supply any and all information at my dispossal in support of CCC's resolution requirements as expressed in their Feb 23 letter. Please let me know how I can best do that. I will be happy to work with you or whoever is managing the CCC response, however I will be out of country from 3/2/16 thru 3/9/16. During that time I will be available via email, but mobile phone connectivity will not be reliable.

Regards,  
Larimore Cummins  
831-750-8331  
[ljcummins@earthlink.net](mailto:ljcummins@earthlink.net)





## **EXHIBIT 5**

Larimore Cummins, M.D.  
1595 Soquel Drive, Suite 350  
Santa Cruz, California 95065

August 10, 1992

Ken Thomas  
Planning and Community Development Dept.  
City of Santa Cruz  
Santa Cruz, CA 95060

re: Completion of seawall project  
1307 West Cliff Drive

RECEIVED  
AUG 12 1992  
GRANITE CONSTRUCTION CO.

Dear Mr. Thomas:

During the period of ocean front damage by high tides and surf in 1983 I was issued an emergency permit to protect my property at 1307 West Cliff Drive. Short term measures got us through the crisis period and subsequent seawall construction was carried out by Granite Construction Company based on a plan by Ifland Engineers, Inc.

The plan called for placement of both rip rap and gabion baskets. All of the gabions and most of the rip rap were placed as planned, however the outermost rip rap could not be placed because of the size of the only available crane. At that time it was determined that we would complete the task the next time Granite was in the area with a crane which would be large enough for the job. They are now doing a project on West Cliff Drive for the City of Santa Cruz and I would like to have them complete my project.

I have spoken with Les Strnad, of the Coastal Commission, and he suggested that I start the approval process with you. I have also touched bases with Tom Sharp, of City Public Works, and with Granite Construction. Their preliminary perspective is favorable as far as timing and availability of equipment and materials. Don Ifland has come out and looked over the current state of the project and agrees that his original plan remains appropriate.

Hopefully we can proceed based on the previously

granted permits from the City and Coastal Commission. Attached is a copy of Don Ifland's project plan. The needed rip rap is circled on the separate photocopy. Also enclosed is a photocopy of an aerial photograph taken in 1989 which accurately represents the current state of the project.

Thank you for your attention to this matter. I look forward to your reply. My phone number at work (462-7512) should be the most convenient way to contact me. Please direct mail to my home address noted below.

Yours very truly,



Larimore Cummins

Home: 426-1868  
1307 West Cliff Drive  
Santa Cruz, CA 95060

enc: Photocopy of Ifland Plan  
Photocopy of 1989 photograph of property

cc: Les Strnad, CA State Coastal Commission  
Donald Ifland, Ifland Engineers, Inc.  
Mike Hedinger, Granite Construction Co.



**EXHIBIT 6**



*ifland engineers, inc.*  
civil and structural design

October 1, 1992

#92120

RECEIVED  
OCT 02 1992  
CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Mr. Tom Sharp  
Public Works Dept.  
809 Center St.  
Santa Cruz, CA 95060

SUBJECT: Cliff Protection at Cummins Residence  
1307 West Cliff Dr.

Dear Mr. Sharp:

Enclosed is a copy of the plans that were prepared for the repair of the cliff on the subject property following the severe storms of 1983. The gabion retaining wall and northerly portion of the riprap were installed at that time. Because of the limited reach of the crane used to place the riprap, the southerly portion of the riprap could not be completed at that time.

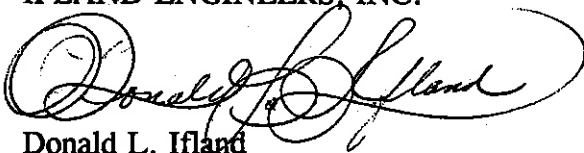
In June of 1992, a site visit was made to the property to observe the existing conditions. In our opinion, the project should be completed per our original plans to prevent further damage and erosion to this portion of the property.

It is our understanding that Granite Construction is presently working on a project on West Cliff Drive for the City of Santa Cruz and that a large crane is now available which could complete Mr. Cummins' project. Therefore, it would be appropriate to complete his project at this time.

If you have any questions, please call.

Yours truly,

IFLAND ENGINEERS, INC.



Donald L. Ifland

DLI/la

Encl: Plan

c: Les Strnad, Coastal Commission  
Larimore Cummins  
1100 water st. • santa cruz, ca. • 95062 • (408) 426-5313

Exhibit 9  
A-3-STC-16-0016  
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**EXHIBIT 7**



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
 640 CAPITOLA ROAD  
 SANTA CRUZ, CA 95062  
 (408) 479-3511

Page 1 of 3  
 Permit Application No. 3-92-78  
 Date November 20, 1992

ADMINISTRATIVE PERMIT

APPLICANT: LARIMORE CUMMINS

PROJECT DESCRIPTION: To install 300 cu. yds. of rip-rap to an existing  
 ±1400 cu. yd. rip-rap seawall as maintenance and repair.

RECEIVED  
 NOV 22 1992  
 SANTA CRUZ COUNTY

PROJECT LOCATION: 1307 West Cliff Drive, Santa Cruz City, Santa Cruz County,  
 APN 3-284-05

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

For Commission meeting of Thursday, December 10, 1992, at 9 a.m. at the  
 Holiday Inn - Financial District, 750 Kearny Street, San Francisco, CA, (415)  
 433-6600

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

PETER DOUGLAS  
 Executive Director

By:

*Les Strnad*  
 Les Strnad  
 Chief of Permits

B1: 4/88  
 1422P

Exhibit 9  
 A-3-STC-16-0016  
 138 of 166

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

The seawall repair is being conducted in conjunction with Santa Cruz City West Cliff Drive Phase II Shoreline Structure Installation of CDP 3-90-111-A2.

SPECIAL CONDITIONS:

1. All work by contractor shall conform to Santa Cruz City Grading Permit No. 131 and specifications of engineered drawings prepared by Ifland & Associates dated 7/20/83.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Michael A. Hedchmy  
Applicant's Signature

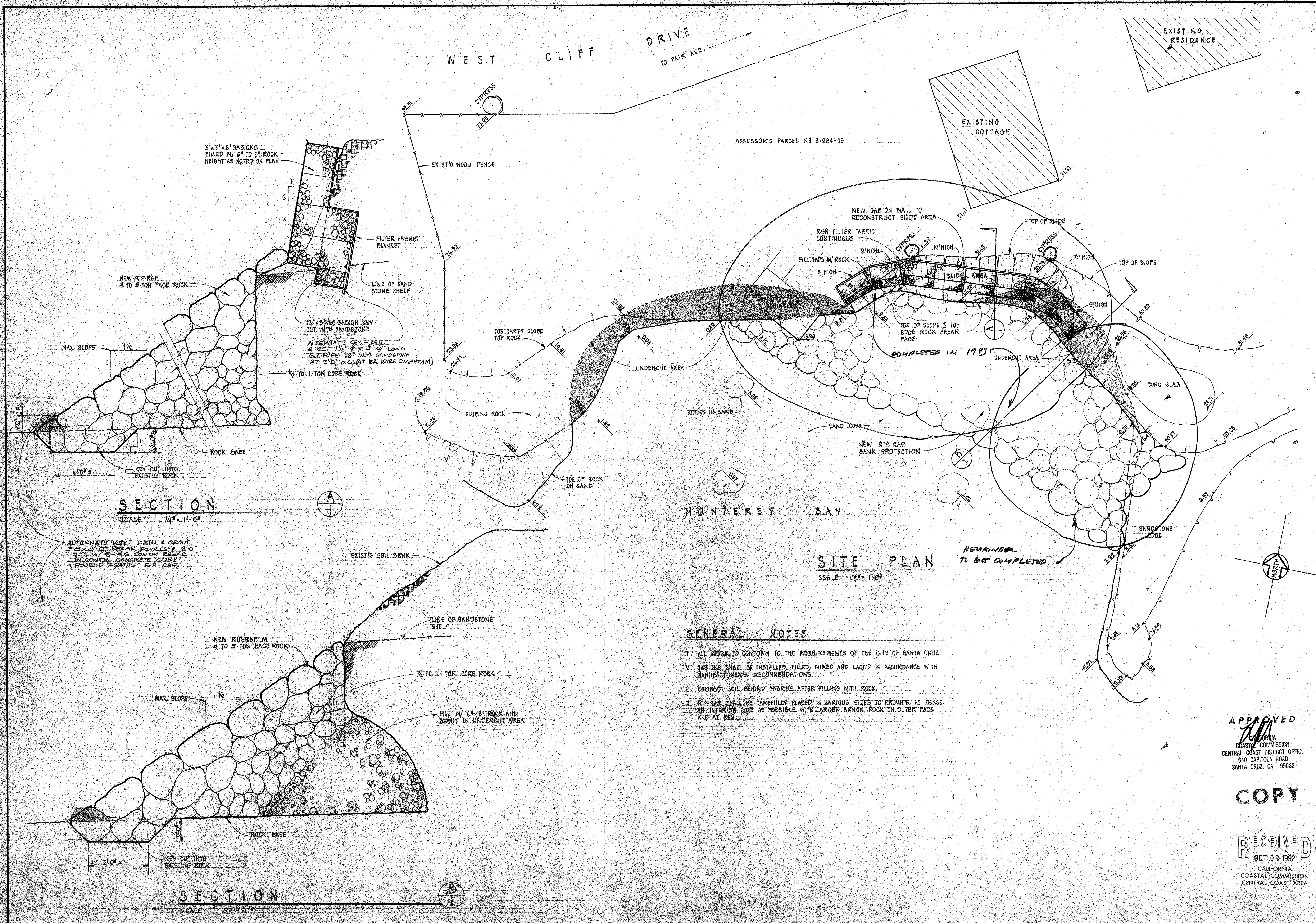
11/23/92  
Date of Signing

1422P



## **EXHIBIT 8**





GENERAL NOTES

1. ALL WORK TO CONFORM TO THE REQUIREMENTS OF THE CITY OF SANTA CRUZ.
2. GABIIONS SHALL BE INSTALLED, FILLED, WIRED AND LAGED IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS.
3. COMPACT SOIL BEHIND GABIIONS AFTER FILLING WITH ROCK.
4. RIP-RAP SHALL BE CAREFULLY PLACED IN VARIOUS SIZES TO PROVIDE AS DENSE AN INTERIOR CORE AS POSSIBLE WITH LARGER ARMOR ROCK ON OUTER FACE AND AT KEY.

APPROVED  
CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST DISTRICT OFFICE  
640 CAPITOLA ROAD  
SANTA CRUZ, CA 95062

COPY

RECEIVED  
OCT 02 1992  
CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

REVISIONS "KEYS" 3-10-82

APPROVED  
  
REGISTERED CIVIL ENGINEER NO 11192

ifland engineers, inc.  
civil and structural design  
1100 under st. santa cruz, ca. 95062 (408) 226-5313

BANK RECONSTRUCTION AND PROTECTION FOR  
LARIMORE CUMMINS  
1301 WEST CLIFF DR., SANTA CRUZ, CA.

A.P.N. 3-284-05  
DATE JULY 20, 1992  
SCALE NOTED

SHEET  
1  
OF 1 SHEETS  
JOB NO. 00185119  
142 of 166



## **EXHIBIT 9**



## Max Rollens

---

**From:** Deidre Hamilton <deidre@hamiltonswift.com>  
**Sent:** Thursday, September 01, 2016 12:54 PM  
**To:** David Ivester; Max Rollens  
**Subject:** FW: West Cliff Drive

FYI  
Deidre

Deidre Hamilton  
[deidre@hamiltonswift.com](mailto:deidre@hamiltonswift.com)



500 Chestnut St, Suite 100  
Santa Cruz, CA 95060  
831.459.9992 | Fax 831.459.9998  
[www.hamiltonswift.com](http://www.hamiltonswift.com)



Please consider the environment before printing this email.

---

**From:** Larimore Cummins [mailto:[ljcummins@earthlink.net](mailto:ljcummins@earthlink.net)]  
**Sent:** Saturday, February 27, 2016 5:53 PM  
**To:** [deidre@hamiltonswift.com](mailto:deidre@hamiltonswift.com)  
**Cc:** [dianne@lifesabeach.com](mailto:dianne@lifesabeach.com)  
**Subject:** West Cliff Drive

Deidre,

Today Dianne Pereira forwarded to me a copy of the Coastal Commission's February 23rd letter regarding 1307 West Cliff Drive. I was under the impression that our paperwork was in order as of 2014, but clearly this letter certainly puts a different light on the situation. Please call me at my number below to discuss how I can support the information needs of the resolution requirements as described in the letter.

Here are some preliminary comments regarding the content of the Feb 23 Letter. As per our previous discussions, I passed the Coastal Commission's information requests regarding the 1983 project along to Granite Construction. I can support Granite's records with the original Ifland drawings that were submitted to the City and Coastal Commission and can add some recollection of events.

Of the two layers of rip rap, the permitted 1992 layer is considerably larger. The rip rap was from a different source each year, as is readily apparent by visual inspection. A sample of the earlier rock type can be seen immediately below the gabions in front of the cottage. Only a small portion of rip rap called for in the Ifland design was installed due to the small size of crane available at the time. It is my understanding that the same design plans were used for the 1992 permitted project as the final result is a good match with their plan. Importantly, the Feb 23 letter mentions the possibility of the rip rap being located on tidal lands and/or obstructing access. I doubt if that is the case, but if so then it is the 1992 permitted rip rap that is the problem, not the considerably smaller 1983 layer. The 1983 rip rap is deep behind the 1992 permitted rip rap. I would be happy to meet you on site to explain this in more detail if that would help.

Again, please pass along to the Honjo's my sincere regrets that the Coastal Commission has taken this action and let them know that I have additional information to support the resolution requirements.

Regards,  
Larimore  
...  
Larimore Cummins  
831-750-8331

## **EXHIBIT 10**

**GRADING PERMIT**  
CITY OF SANTA CRUZ  
INSPECTION SERVICES

G

131

**For Inspection Call 429-3578**

DATE 10/20/92 WKRS. COMP. SELF-INSURED BUS. LIC. NO. 45598  
LOCATION OF JOB 1307 WEST CLIFF DR.  
OWNER'S NAME LARIMORE CUMMINS ADDRESS \_\_\_\_\_ PHONE 476-6300  
CONTRACTOR'S NAME GRANITE CONST LIC. NO. 000089 PHONE \_\_\_\_\_

Permit Fee		EXTENSION of SEAWALL PROTECTION (RIP RAP PLACEMENT) of WEST CLIFF DR. (PHASE I & II) CURRENTLY UNDER CON. EXPAND PROJECT TO PROTECT
Under 50 Cy.		
Over 50 Cy. <u>300CY</u>		
Eng. Fill		
Other		

REMARKS ABOVE NOTED ADDRESS. (BASED ON OR FROM  
COASTAL COMM.)

APPLICATION IS HEREBY MADE FOR A PERMIT ON THE INFORMATION STATED ABOVE.

THIS PERMIT IS SUBJECT TO ALL THE RULES AND REGULATIONS GOVERNING SUCH  
WORK SET FORTH IN ORDINANCES OF THE CITY OF SANTA CRUZ AND THE LAWS OF THE  
STATE OF CALIFORNIA AND ALL AMENDMENTS THERETO.

+ Michael A. Hedley  
LICENSED GRADING CONTRACTOR OR HIS AGENT

RECEIPT FOR 45.00 DOLLARS  
AS FEE IS HEREBY ACKNOWLEDGED AND PERMIT GRANTED.

Rolando C. Guevara  
INSPECTION SERVICES BY

Exhibit 9  
16-0016  
146 of 166



**EXHIBIT 11**

## California Coastal Com. v. Alves

Court of Appeal of California, First Appellate District, Division One

January 23, 1986

No. A024184.

### Reporter

222 Cal. Rptr. 572; 1986 Cal. App. LEXIS 2497; 176 Cal. App. 3d 952

CALIFORNIA COASTAL COMMISSION, Plaintiff and Appellant, v. GREGORIA ALVES et al., Defendants and Respondents.

**Notice:** NOT CITABLE - ORDERED NOT PUBLISHED

**Subsequent History:** [\*\*1] As Modified on Denial of Rehearing February 20, 1986; Review Denied April 24, 1986

**Prior History:** Superior Court of San Mateo County, No. 255969, Thomas M. Jenkins, Judge.

**Counsel:** John K. Van de Kamp, Attorney General, N. Gregory Taylor, Assistant Attorney General, and Dennis M. Eagan, Deputy Attorney General, for Plaintiff and Appellant.

William F. Pagano, John J. Hartford, Donald M. Layne, Germino, Layne, Brodie, Runte, Maguire & MacKay, Albert K. Martin, Michael N. Stafford, O'Rourke & Stafford, James A. Reuben and Reuben, Quint & Valkevich for Defendants and Respondents.

**Opinion by:** NEWSOM

### Opinion

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[\*576] NEWSOM, J.

On July 24, 1981, the California Coastal Commission (hereafter appellant or Commission) filed a complaint against respondents as owners, developers and subdividers of a 105-acre parcel (hereafter the property) located approximately 1.5 miles inland from the coast in San Mateo County. Two causes of action pursuant to the California Coastal Act of 1976 (hereafter the Coastal Act or Act) (Pub. Res. Code, § 30000 et seq.)<sup>1</sup> were alleged: 1) unlawful subdivisions of the property; and 2) construction of a house and other improvements on one of the subdivided parcels. The complaint [\*\*2] sought civil fines in the amount of \$10,000 from each respondent (§ 30820), additional civil fines for intentional violations of the Act (§ 30821), and also requested that an injunction issue 1) restraining further construction or sale of structures on the property; 2) requiring removal of the partially completed house on the property; 3) restraining the sale of any of the lots, and 4) requiring recombination of the subdivided lots into a single 105-acre parcel.

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<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise indicated.

After a court trial, judgment was entered in favor of respondents. The following is a summary of the pertinent evidence adduced at trial.

In the spring of 1976, the property was owned by Gregorio, Bernice, Joseph and Elaine Alves (hereafter the Alves), who applied to the County of San Mateo for a permit to subdivide the 105-acre lot into four parcels. Before completion of a tentative parcel map of the proposed subdivision in May and June of 1976, respondents Robert Martel and Stelios Hagiperos agreed in writing to purchase two of the four lots to be subdivided. Thereafter, Martel and Hagiperos made payments on the [\*\*3] property and shared the costs of the subdivision with the Alves.

On July 13, 1976, the San Mateo County Planning Commission conditionally approved the subdivision. Some of the conditions for final approval were modified by the County Board of Supervisors in November of 1976. The final parcel map was approved by the county on December 31, 1976.

The Coastal Act was signed by the Governor on September 29, 1976, and became effective on January 1, 1977. Among other things, the Act amended the Coastal Initiative of 1972 (Prop. 20) by extending inland the boundary of the coastal zone to arguably include the property, thus requiring approval by the Commission and a permit for any development thereon.

[\*577] The final parcel map was recorded on January 19, 1977; it divided the property into four parcels. By deeds dated January 27, 1977, Hagiperos and Martel received title to one parcel each. A third parcel was subsequently jointly deeded to Hagiperos and Martel.

In response to an inquiry by Hagiperos, the Commission advised that approval for a well on one of the parcels was required. Subsequently, on May 11, 1977, the Commission notified both Hagiperos and Martel that "because the [\*\*4] subdivision has not been approved by the Coastal Commission, its legal status is uncertain . . . ." The Alves received a copy of this letter.

The Alves were prompted by the Commission's letter to apply on May 27, 1977, for a "vested rights" exemption from the Coastal Act's permit requirements. The request for such exemption was denied by the regional Commission on July 18, 1977, and the Alves' appeal of that decision was also denied by the state Commission. No judicial review of the Commission's denial of the vested rights claim was sought. The Commission also denied the Alves' application for approval of the subdivision.

On November 21, 1977, Hagiperos applied to San Mateo County for a building permit to construct a single family dwelling on one of the parcels. Then, in March of 1978, Hagiperos and Martel jointly requested permission to subdivide the same parcel (Parcel C) into two lots. The subdivision was approved and a final parcel map creating the two new lots was recorded on October 11, 1979. The building permit was granted on January 7, 1980, and thereafter some construction work on the house was performed before appellant filed its complaint.

In October of 1981, Hagiperos [\*\*5] and Martel asked the County of San Mateo for clarification as to the validity of the subdivision of the property under the Coastal Act and the county's certified local coastal plan. Through its planning director, the county issued a certificate



exempting the subdivision from the coverage of the Act on the ground that it was completed prior to January 1, 1977. Appellant sought neither an administrative appeal nor judicial review of the county's determination.

The Graves acquired one of the lots created by the 1981 subdivision. Once the Commission filed the present action, however, they rescinded their purchase agreement and retransferred the lot to Hagiperos and Martel.

We turn first to appellant's contention that the trial court erred in ruling that development of the property was completed before January 1, 1977--the effective date of the 1976 Coastal Act by which the property was purportedly included within the coastal zone--and that consequently the Commission had no authority to seek sanctions against respondents. Appellant maintains that the subdivision of the property was not complete until the final parcel map was *recorded* on January 19, 1977. Respondents, on the other [\*6] hand, cite the *approval* of the final subdivision map on December 31, 1976, as the completion date of the subdivision.

Under the Coastal Act, a subdivision unquestionably constitutes a "development" of land for which approval must be obtained from the Commission. (§ 30106.) A critical inquiry before us is the date upon which the subdivision was completed with reference to the effective date of the Coastal Act.

Since the Coastal Act itself does not specify the date on which a subdivision is deemed a completed development, the Commission relies upon a provision of the Subdivision Map Act, Government Code section 66412.7, which states: "A subdivision shall be deemed established . . . on the date of recordation of [the] . . . parcel map . . . ." But we do not find section 66412.7 dispositive here for two reasons: First, it was not enacted until after recordation of the initial four-lot subdivision of the property; second, the provisions of the Subdivision Map Act do not necessarily apply to Coastal Act cases ( *South Central Coast Regional Com. v. Charles A. Pratt Construction Co.* (1982) 128 Cal.App.3d 830, 845, 846 [180 Cal.Rptr. 555]).

[\*578] Final approval of [\*7] a parcel map constitutes recognition that all conditions for subdivision imposed by the local governing body have been satisfied. ( *Del Mar v. California Coastal Com.* (1984) 152 Cal.App.3d 49, 52 [199 Cal.Rptr. 225]) Once the final parcel map is approved, the subdivision is complete, except for the purely ministerial act of recordation. ( *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 653-654 [150 Cal.Rptr. 242, 586 P.2d 556].) As of December 31, 1976, no further governmental endorsement of the subdivision was necessary; the subsequent act of recordation served only to provide notice of the development to third parties. ( *Lawyers Title Co. v. Bradbury* (1981) 127 Cal.App.3d 41, 45 [179 Cal.Rptr. 363].) Thus, the subdivision received formal governmental approval on that date, and hence it must be considered a completed "development" before the effective date of the Coastal Act.

We acknowledge that the laudable goals of the Coastal Act are served by broadly construing the effect of its provisions. The Coastal Act is a "major statement of overriding public policy regarding the need to preserve the state's coastal resources . . . ." ( *South Central* [\*8] *Coast Regional Com. v. Charles A. Pratt Construction Co.*, *supra*, 128 Cal.App.3d 830, 844.) But we

are not persuaded that, by exempting from its terms a subdivision which was finally approved before the effective date of the Act, we will compromise the objectives of the law.

We accordingly find that the subdivision of the 105-acre parcel into four lots predated the Coastal Act by which the property was made part of the coastal zone. It remains to be determined, however, whether the subsequent "development" of the property--including the grant of a building permit, construction work on the property, and a further subdivision creating two lots from one of the original four--all of which unquestionably occurred *after* the Coastal Act became operative, required prior approval by the Commission.

Respondents insist that they acquired a vested right to divide and otherwise develop the property under section 30608, which provides: "No person who has obtained a vested right in a development prior to the effective date of this division . . . shall be required to secure approval for the development pursuant to this division . . . ." Appellant challenges respondents' right to assert [\*\*9] a vested right in the development, citing *South Coast Regional Com. v. Gordon* (1977) 18 Cal.3d 832 [135 Cal.Rptr. 781, 558 P.2d 867] (hereafter "*Gordon*") as authority for the proposition that failure to seek timely judicial review of the Commission's adverse determination of an application for a vested rights exemption precludes subsequent presentation of such a claim in the courts.

The record shows that the Alves made a claim for a vested rights exemption which was rejected, first by the regional commission on July 10, 1977, and then by the state Coastal Commission on September 7, 1977. Respondents did not file a petition for writ of mandate or take other action seeking judicial review of the Commission's decision.

In *Gordon, supra*, 18 Cal.3d 832, the landowner attempted to assert a vested rights exemption for the first time as a defense to an enforcement action by the Commission seeking fines and injunctive relief for violation of the 1972 Coastal Act. He did not apply to the Commission for an exemption. Our high court ruled "that Gordon was required to present his exemption claim to the commission as a condition of raising the claim in the trial court" ([\*\*10] *id.*, at p. 834), explaining: "If developers were allowed to resort to the courts in the first instance, it would not only frustrate one of the underlying purposes of the exhaustion doctrine, i.e., the need for judicial intervention might be obviated by the outcome of the administrative proceedings, but would also reward developers who made no attempt to fulfill the requirements of the act and the regulations, while penalizing those who made a [\*579] good faith effort to comply." (*Id.*, at p. 838.)

*Gordon*, however, is not dispositive here, if only because, in the present case, the Alves sought an exemption from the Commission, whereas the landowner in *Gordon* completely ignored his administrative remedies.

We thus turn to the Commission's other authority for its claim of waiver, section 30801, which provides: "Any aggrieved person shall have the right to judicial review of any decision or action of the commission or regional commission by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure, within 60 days after such decision or action has become final." It is now settled that failure to file a [\*\*11] timely petition

for writ of mandate as directed by this provision renders the Commission's decision immune from attack in a collateral proceeding. ( *Walter H. Leimert Co. v. California Coastal Com.* (1983) 149 Cal.App.3d 222, 233 [196 Cal.Rptr. 739]; *Briggs v. State of California ex rel. Dept. Parks & Recreation* (1979) 98 Cal.App.3d 190, 196, fn. 3 [159 Cal.Rptr. 390]; *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 503 [157 Cal.Rptr. 190].)

Notwithstanding the quoted provision, we conclude that respondents must be given the opportunity to assert a vested-rights claim as a *defense* to the Commission's action for fines, exemplary damages and injunctive relief. Section 30801 certainly is not designed to deprive an aggrieved party of the right to raise legitimate defenses to an action by the Commission; on the contrary, that statute provides rather than extinguishes the right to challenge a decision by the Commission. Nor, in our view, does the exhaustion of remedies doctrine preclude presentation of a vested-rights defense in the present action by the Commission, although we agree that a collateral proceeding to challenge the [\*\*12] Commission's denial of a vested-rights claim *instituted by the aggrieved party*, such as a declaratory relief action, would be barred under this tenet. ( *Walter H. Leimert Co. v. California Coastal Com.*, *supra*, 149 Cal.App.3d 222, 232.) We conclude that respondents' vested rights defense is cognizable in this action.

The doctrine of vested rights protects property owners from changes in land use regulations which occur before completion of the owner's development project by permitting completion of the development notwithstanding an intervening change in the law that would otherwise preclude it. ( *Tosh v. California Coastal Com.* (1979) 99 Cal.App.3d 388, 392 [160 Cal.Rptr. 170].) Acquisition of a vested right requires a showing that the property owner has performed substantial work or otherwise incurred substantial liability in good faith reliance upon a governmental permit. ( *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 864 [201 Cal.Rptr. 593, 679 P.2d 27]; *Tosh, supra*, at p. 393.) In light of the comprehensive purpose of the Coastal Act to protect and preserve the natural and scenic resources of the coastal zone, our high [\*\*13] court has cautioned that "substantial doubts regarding the meaning and effect of the exemption provision [citation] should be resolved against the person seeking exemption." ( *Urban Renewal Agency v. California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 588 [125 Cal.Rptr. 485, 542 P.2d 645]; see also *South Central Coast Regional Com. v. Charles A. Pratt Construction Co.*, *supra*, 128 Cal.App.3d 830, 844.)

Mindful of this wise admonition, we nevertheless conclude that, under the particular and rather unusual circumstances of the present case, respondents acquired a vested right to undertake and complete such development of the property as was contemplated and implicitly sanctioned by the original four-lot subdivision, without the need for further subdivision of the property. We are cognizant of the settled rule that more than mere final map approval must be shown before a vested right will attach to a development; proof of substantial [\*580] liability in good-faith reliance upon governmental approval is also required. ( *Santa Monica Pines, Ltd. v. Rent Control Board, supra*, 35 Cal.3d 858, 867; *Tosh v. California Coastal Com.*, *supra*, [\*\*14] 99 Cal.App.3d 388, 393.) We find sufficient evidence of such liability in the present record, as it is apparent that respondents incurred substantial expenditures in preparing the subdivision and in contemplation of governmental approval of additional development of the subdivided property.



We do not feel constrained to a contrary conclusion by *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785 [132 Cal.Rptr. 386, 553 P.2d 546], where our high court declared that "neither the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued." (*Id.*, at p. 793.) Our conclusion, that respondents' vested right to develop the property is limited in extent to those acts sanctioned by the original subdivision, is essentially in accord with *Avco*. If, as the record seems to indicate, respondents were not entitled to construct a house or other improvements on the property by virtue of the original four-lot subdivision--that is, if the [\*\*15] county required the second subdivision or governmental approval other than a permit from the Commission for the construction contemplated by respondents--such development would not find sanction in our application of the vested rights rule.<sup>2</sup>

We find no such vested right to further subdivide Parcel C into two lots. The 1978 subdivision application was completed in 1979, well after the effective date of the Coastal Act. In fact, since respondents knew the Commission had challenged their development of the property *before* the second subdivision was even sought, the good faith requisite of vested rights is negated. And we decline to hold that a vested right to complete the first subdivision, and attendant development, entitled respondents to effectuate a subsequent, separate and distinct subdivision of the property without compliance with Coastal Act requirements. ( *Santa Monica Pines, Ltd. v. Rent Control Board*, *supra*, 35 Cal.3d 858, 867; *Billings v. California Coastal Com.* [\*\*16] (1980) 103 Cal.App.3d 729, 735 [163 Cal.Rptr. 288].) Accordingly, we find that the second subdivision and any development of the property made possible thereby finds no justification under the vested rights rule.

We turn next to appellant's contention that the trial court erred in accepting respondents' statute of limitations defense. The only remaining violation with which we are concerned is the second subdivision of the property, which was completed in October of 1979 (the date of final approval of the map) subdividing one of the four parcels (Parcel C) into two new lots, and any construction on those two lots not authorized under the original subdivision.

Respondents argue that Government Code section 66499.37, part of the Subdivision Map Act (Gov. Code, § 66410 et seq.), relates the statute of limitations applicable to actions brought by the Commission under authority of the Coastal Act. It provides: "Any action or proceeding to attack, review, set aside, void or annul the decision of an advisory agency, appeal board or legislative body concerning a subdivision, or of any of the proceedings, acts or determinations taken, done or made prior to such decision, or to determine [\*\*17] the reasonableness, legality or validity of any condition attached thereto, shall not be maintained by any *person* unless such action or proceeding is commenced and service of summons effected *within 90 days after the date of such decision*. Thereafter all persons are barred from any such action or proceeding or any defense of

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<sup>2</sup> We leave it to the trial court upon remand to determine the extent of respondents' vested rights to develop the property, if any, in accordance with the views expressed herein.

invalidity or [\*581] unreasonableness of such decision or of such proceedings, acts or determinations." (Italics added.)

The defect in respondents' position respecting the statute of limitations is that the Commission is not proceeding under the Subdivision Map Act, nor is it challenging "the decision of an advisory agency, appeal board or legislative body concerning a subdivision . . . ." Concededly, the Commission is asserting that respondents' subdivision of the property constitutes an unapproved "development" in contravention of the Act. But the validity of the subdivision under the Subdivision Map Act is not at issue here. The Commission has instead brought suit under authority of the Coastal Act contesting a "development," and seeking to enjoin violations of the Coastal Act (§ 30803), and to impose civil fines (§§ 30820, 30821) and exemplary [\*\*18] damages (§ 30822). Significantly, in its action the Commission contested not only the unapproved subdivisions, but also other "development" of the property.

In our view, then, the present proceeding is not one to attack or review a decision "concerning a subdivision" within the meaning of Government Code section 66499.37. The Coastal Act imposes separate and independent requirements with which the Commission asserts respondents did not comply. Section 30600, subdivision (a) confirms this to be so by stating that a coastal development permit must be obtained "[i]n addition to any other permit required by law from any local government or from any state, regional or local agency. . . ." (See also § 30601; *California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 587-588 [170 Cal.Rptr. 263].)

Also persuasive to us is the fact that while the Coastal Act fails to specifically incorporate section 66499.37 (or any other statute) as its statute of limitations for actions by the Commission to recover fines or obtain injunctive relief, brief periods of limitations are imposed for actions to review decisions of the Commission (§ 30801) or local governments [\*\*19] "implementing a certified local coastal program" (§ 30802).<sup>3</sup> Accordingly, we find it reasonable to conclude that the Legislature did not intend the 90-day period of limitations contained in section 66499.37 to apply to actions brought by the Commission to collect fines or exemplary damages, or restrain violations of the Coastal Act, particularly in light of an overriding public purpose of protecting the coastal zone which demands liberal application of the Coastal Act.

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<sup>3</sup> In pertinent part, section 30801 provides: "Any aggrieved person shall have a right to judicial review of any decision or action of the commission or a regional commission by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure, within 60 days after such decision or action has become final."

Section 30802 provides: "Any person, including an applicant for a permit or the commission, aggrieved by the decision or action of a local government that is implementing a certified local coastal program or certified port master plan, or is exercising its powers pursuant to Section 30600.5, which decision or action may or may not be appealed to the commission, shall have a right to judicial review of such decision or action by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 60 days after the decision or action has become final. The commission may intervene in any such proceeding upon a showing that the matter involves a question of the conformity of a proposed development with a certified local coastal program or certified port master plan or the validity of a local government action taken to implement a local coastal program or certified port master plan. Any local government or port governing body may request that the commission intervene. Notice of this action against a local government or port governing body shall be filed with the commission within five working days of the filing of this action. When an action is brought challenging the validity of a local coastal program or certified port master plan, a preliminary showing shall be made prior to proceeding on the merits as to why such action should not have been brought pursuant to the provisions of Section 30801."

[\*\*20] We are forced to look elsewhere for the statute of limitations applicable to actions by the Commission. Without guidance from the Coastal Act, we must consult the general statutes of limitation. ( *G.H.I.I. v. [\*\*582] MTS, Inc.* (1983) 147 Cal.App.3d 256, 276 [195 Cal.Rptr. 211, 41 A.L.R.4th 653].)

The trial court found that the Commission's suit is governed by the one- year period of limitations for actions "upon a statute for a penalty or forfeiture . . . ." (Code Civ. Proc., § 340, subd. (1).) In contrast, Code of Civil Procedure section 338, subdivision 1, provides a three-year period of limitations for actions "upon a liability created by a statute, other than a penalty or forfeiture." <sup>4</sup> There is no dispute that the duties and violations here at issue exist only by virtue of the Coastal Act, and consequently were created by statute. ( *Travelers Express Co., Inc. v. Cory* (9th Cir. 1981) 664 F.2d 763, 766.) It thus remains to be determined whether the Commission's action is one for a "penalty or forfeiture," so as to make applicable the one-year, rather than the three-year, period of limitations of Code of Civil Procedure section 340, subdivision (1). [\*\*21]

It is well settled that any law compelling a defendant to pay damages beyond or without reference to actual loss is penal in nature. ( *Ashland Oil Co. of Cal. v. Union Oil Co. of Cal.* (T.E.C.A. 1977) 567 F.2d 984, 991; *County of San Diego v. Milotz* (1956) 46 Cal.2d 761, 766 [300 P.2d 1]; *G.H.I.I.v. MTS, Inc., supra*, 147 Cal.App.3d 256, 277-278.) Under this standard, that part of the Commission's suit for exemplary damages (§ 30822) and additional civil fines for intentional and knowing violations (§ 30821) of the Coastal Act must be characterized as actions for penalties. Such actions seek to impose monetary punishment in excess of the harm inflicted upon the public, and therefore are governed by the one- year limitations period. ( *Rivera v. Anaya* (9th Cir. 1984) 726 F.2d 564, 567-568; *County of San Diego v. Milotz, supra*, 46 Cal.2d 761, 766-767; *G.H.I.I. v. MTS, Inc., supra*, 147 Cal.App.3d 256, 278-279.)

A more difficult question is presented by appellant's request for civil [\*\*22] fines pursuant to section 30820, the basic damages provision of the Coastal Act. We admit some difficulty in discerning the distinction between penal and merely compensatory civil fine statutes. Nevertheless, we are persuaded by two factors unique to the statutes here under consideration to conclude that section 30820 does not extract a "penalty or forfeiture" within the meaning of Code of Civil Procedure, section 340, subdivision (1).

First, a dual scheme of fines is fashioned by the Act: the basic damages provision is operative for all violations; additional civil fines and exemplary damages, manifestly punitive, can be imposed only for more egregious transgressions. We do not believe that the Legislature intended for the former sanction to be given the same penal treatment as the latter.

Of greater significance, in our view, is the fact that section 30820 does not specify a fine disproportionate to the wrong committed. Rather, it provides that each violation "shall be subject to a civil fine of not to exceed ten thousand dollars (\$10,000)," thus permitting the trial court to exercise its discretion in deciding upon an appropriate fine, with the critical constraint that the

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<sup>4</sup> These statutes of limitations are applicable to the state and its agencies in the same way as they are to a private person. (Code Civ. Proc., § 345.)



fine [\*\*23] be commensurate with the gravity of the wrong and the harm to the coastal zone.<sup>5</sup> As so construed, section 30820 is a remedial statute. Accordingly, actions brought pursuant to section 30820 are properly subject to the three-year period of limitations of Code of Civil Procedure section 338, subdivision 1. ( *Rivera v. Anaya*, *supra*, 726 F.2d 564, 569; *G.H.I.I. v. MTS, Inc.*, *supra*, 147 Cal.App.3d 256, 279.)

[\*583] We have no difficulty in concluding that the action for injunctive relief is remedial and hence governed by the three-year period of limitations. Such action seeks to remedy the effect of the violations, not to punish respondents for their transgressions. ( *Rivera v. Anaya*, *supra*, 726 F.2d 564, 569.)

Summarizing, we find a two-pronged statute of limitations appropriate: the actions for civil fines for intentional violations (§ 30821) and [\*\*24] exemplary damages (§ 30822) are governed by the one-year statute of limitations (Code Civ. Proc., § 340, subd. (1)). A three-year period of limitations (Code Civ. Proc., § 338, subd. 1 applies to the Commission's request for civil fines (§ 30820) and injunctive relief (§ 30803).

We must next determine the accrual dates for the respective periods of limitations. Appellant argues that the violations are akin to the tort of nuisance--of a continuous and recurring nature such that "the statute recommences to run for each day that the violation exists." Respondents insist that the periods of limitations began to run no later than the recording of the final parcel map on January 19, 1977, making appellant's complaint, filed on July 24, 1981, untimely under either the one-year or three-year statutes. Unpersuaded by either side of the argument, we adopt a middle position.

It is of course the general rule that a statute of limitations accrues when the act occurs which gives rise to the claim ( *Myers v. Eastwood Care Center, Inc.* (1982) 31 Cal.3d 628, 634 [183 Cal.Rptr. 386, 645 P.2d 1218]), that is, when a party is entitled to bring an action and seek a remedy ( *April Enterprises, [\*\*25] Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 822 [195 Cal.Rptr. 421]; *Martin v. Kehl* (1983) 145 Cal.App.3d 228, 240 [193 Cal.Rptr. 312]). For statutory violations, the accrual date normally arises when an action may be maintained by the administrative agency charged with the enforcement of the law. ( *Myers*, *supra*, at p. 635.)

For the second subdivision here at issue, the period of limitations began to run no later than October of 1979, when that subdivision was approved and the parcel map recorded.<sup>6</sup> Hence, the three-year statute of limitations applicable to the actions for civil fines (§ 30820) and injunctive relief (§ 30803) had not run by the time the Commission filed its complaint in July of 1981. But the requests for additional civil fines (§ 30821) and exemplary damages (§ 30822) for that

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<sup>5</sup> We add that in the case at bench the violation still at issue entails no great damage to the public, as it can be easily remedied--by recombination of the two parcels and removal of any construction not authorized by the original subdivision--and thus no more than a nominal fine would be justified.

<sup>6</sup> For any development of the property made possible by and based upon the second subdivision, the period of limitations accrued when the relevant building or other permits were obtained.

violation are time barred by the lapse of the one-year period of limitations <sup>7</sup>, and were properly refused by the trial court.

[\*\*26] The trial court also found that respondents Hagiperos and Martel established a good faith defense to the Commission's action. Appellant argues that no such defense exists, at least as to the actions for civil fines and injunctive relief, and also challenges the finding that respondents entertained [\*584] a good faith belief that they were not violating the Coastal Act.

A good faith belief in the legality of a "development" is unquestionably a defense to an action for additional civil fines (§ 30821) or exemplary damages (§ 30822), as both sanctions require a showing of an intentional and knowing violation of the Coastal Act. Good faith negates the requisite element of intentionality.

The basic penalty provision of the Coastal Act, however, does not demand a knowing or intentional violation. Section 30820 imposes a civil fine for "any person who violates any provision of this division . . . ." We are bound to conclude that the omission of an intent element from section 30820 by the Legislature was no mere oversight, but was intended to impose a strict civil liability. ( *Aantex Pest Control Co. v. Structural Pest Control Bd.* (1980) 108 Cal.App.3d 696, 702 [166 Cal.Rptr. [\*27] 763].)

Section 30803 also states that an action for declaratory and injunctive relief lies for "any violation of this division." In contrast to sections 30821 and 30822, no mention is made of a mens rea requirement or a good faith defense. The statutory penalty scheme is thus distinguishable from that considered in *No Oil, Inc. v. Occidental Petroleum* (1975) 50 Cal.App.3d 8 [123 Cal.Rptr. 589] and relied upon by respondents, in which the lack of a requirement of a "substantial element of culpability" in any of the penalty provisions of the original coastal initiative convinced the court to accept good faith as a defense.

Recent cases construing environmental legislation have recognized a "public welfare" exception to the mens rea requirement. In *People v. Chevron Chemical Co.* (1983) 143 Cal.App.3d 50 [191 Cal.Rptr. 537] (hereafter *Chevron*) Division Two of this court, found Fish and Game Code section 5650, subdivision (f), which makes it "unlawful to deposit in, permit to pass into or place where it can pass into waters of this State any . . . substance or material deleterious to fish, plant life or bird life," to be a strict liability offense, noting that [\*28] it was one of a class "public welfare crimes . . . purely regulatory in nature and involving widespread injury to the public." ( *Id.*, at pp. 53-54.) The court reasoned: "Section 5650 on its face does not require [proof of scienter or

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<sup>7</sup> It is also established that a statute of limitations does not run on a continuing nuisance. (Civ. Code, § 3490; *Phillips v. City of Pasadena* (1945) 27 Cal.2d 104, 107 [162 P.2d 625]; *Tucker v. Watkins* (1967) 251 Cal.App.2d 327, 333 [59 Cal.Rptr. 453].) Neither does a period of limitations accrue while a statutory violation continues. ( *City of Fontana v. Atkinson* (1963) 212 Cal.App.2d 499, 509 [28 Cal.Rptr. 25].)

Contemporary environmental legislation such as the Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. ( *CEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 318 [118 Cal.Rptr. 315]; see also *Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal.App.3d 605, 618 [200 Cal.Rptr. 575].) The action to restrain the violation of the Coastal Act is thus akin to a suit to abate a continuous public nuisance, delaying accrual of the applicable statutes of limitations. Since none of the statutory violations were cured by the time appellant filed its complaint, the one and three-year periods of limitations did not run on the injunctive relief action. ( *City of Fontana v. Atkinson*, *supra*, 212 Cal.App.2d 499, 509.)

criminal negligence]. What is more important, however, is that the subject matter of this statute--the prevention of adverse impacts upon California's fish, plant life or bird life through water pollution--is clearly within the regulatory *public welfare* exception to the criminal prosecution mens rea requirement." ( *Id.*, at p. 54.)<sup>8</sup>

The same court in *Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.*, *supra*, 153 Cal.App.3d 605, relied upon *Chevron* to conclude that the McAteer-Petris Act (Gov. Code, § 66600 et seq.)--proscribing unauthorized fill of the San Francisco Bay--is a strict liability regulation, permitting the San Francisco Bay Conservation and Development Commission to issue cease and [\*29] desist orders even to innocent landowners who passively countenanced the continued presence of fill on land within the commission's jurisdiction. Stressing that the goal of the legislation to protect a precious natural resource would be frustrated by implying an intent element into the statute ( *id.*, at pp. 616-617), the court again applied the "public welfare exception to the requirement of guilty intent," explaining: "Thus, whether the context be civil or criminal, liability and the duty to take affirmative action flow not from the landowner's active responsibility for a condition of his land that causes widespread harm to others or his knowledge of or intent to cause such harm but rather, and quite simply, from his very possession and control of the land in question. (See *Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 369-370 [178 Cal.Rptr. 783, 636 P.2d 1121].) This principle [\*585] that the private right to control land carries with it certain strictly enforceable public responsibilities is, as we have seen, a venerable idea; and it is one that grows progressively more vital in the law as the interdependencies in our society become more apparent and the [\*30] threats to the integrity of our environment more ominous." ( *Id.*, at p. 622.)

Almost identical concerns are present in these proceedings. Sections 30803 and 30820 conspicuously have no intent requirements, as do other penalty provisions of the Coastal Act. Like the regulations at issue in *Chevron* and *Leslie Salt Co.*, the Coastal Act is public welfare legislation aimed at protecting the environment. And the objectives of the Coastal Act, particularly in restraining violations inimical to the coastal zone, would be seriously subverted if we were to imply an intent requirement. Finally, the imposition of civil fines and injunctive relief seek to redress harm to the public rather than punish the offenders, thus making inquiry concerning the existence of mens rea irrelevant in determining the appropriate sanctions. We accordingly conclude that the trial court erred in finding that the good faith of respondents Hagiperos and Martel was a valid defense to the Commission's request for civil fines (§ 30820) and injunctive relief (§ 30803) as remedies for violations of the Coastal Act.

The Commission next contends that proof of violations of the Coastal Act requires issuance [\*31] of the requested injunction. The Commission's claim is that once a violation of the act is established, an injunction *must* issue to restrain it. Respondents counter by arguing that "relative hardships" should be considered, which in the case at bench favor denial of injunctive relief.

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<sup>8</sup> We express no view of the propriety of dispensing with the mens rea requirement of Penal Code section 20 in criminal "public welfare" cases, but have no difficulty in admitting such an exception in the civil area.

The language of section 30803 supports the Commission's position by stating: "On a prima facie showing of a violation of this division, preliminary equitable relief *shall* be issued to restrain any further violation of this division." (Italics added.) While section 30803 is not expressly applicable to an action seeking a *permanent* injunction, such as this one, we find that use of the mandatory term "shall" indicates a legislative intent to make injunctive relief automatic and undeniable once a violation is established.<sup>9</sup> The paramount interest of the public in protecting the coastal zone ( *South Central Coast Regional Com. v. Charles A. Pratt Construction Co.*, *supra*, 128 Cal.App.3d 830, 844), demands the liberal use of injunctive relief to enjoin any violation of the Coastal Act. And an injunction is a proper remedy for statutory violations amounting to a public nuisance, such as [\*\*32] those established here. ( *City of Los Angeles v. Silver* (1979) 98 Cal.App.3d 745, 750 [159 Cal.Rptr. 762]; *City & County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 401 [100 Cal.Rptr. 223].) We are thus persuaded that appellant, having proved at least a single violation of the Coastal Act, is entitled to injunctive relief in this opinion.

Even if we were balancing hardships, equitable considerations would demand that we restrain established violations of the Coastal Act. The only factor favoring denial of the injunction is laches. ( *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors* (1974) 38 Cal.App.3d 257, 265 [113 Cal.Rptr. 328].) But respondents have failed to affirmatively prove any prejudice from the Commission's delay in instituting this action. And the manifest interest in protecting the coastal zone outweighs any demonstrated hardship to respondents.

[\*\*33] Neither does the doctrine of "completed acts" bar injunctive relief, as respondents suggest. As noted, the violation persists, and can be effectively remedied by an injunction.

Finally, contrary to respondents' claim, the County of San Mateo is not an indispensable [\*586] party so as to make compliance with an order to recombine the subdivided parcels impossible. Once the property owners are directed to recombine the parcels, they have the power to effectuate compliance with the court's order by presenting an appropriate map to the county for recording.

We accordingly conclude that the trial court erred in denying appellant's request for injunctive relief respecting those violations which we here find to have occurred.

Finally, we turn to respondents' request that we declare section 30103, which defines the "coastal zone," as vague and violative of due process, or in the alternative that we construe the statute to exclude the property from the coverage and requirements of the Coastal Act, thus negating all claimed violations.

Section 30103, subdivision (a), defines the "coastal zone" as follows: "Coastal zone" means that land and water area of the State of California from [\*\*34] the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally

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<sup>9</sup> We express some consternation that the Legislature has failed to specially provide standards for granting permanent injunctive relief, and particularly note that nothing in this opinion should be construed as sanctioning such relief upon a mere "prima facie" showing.



1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control of drainage channel flowing into such area."

Respondents contend that in its reference to maps showing the boundary of the coastal zone, while at the same time specifying such boundary to be "generally 1,000 yards [\*\*35] from the mean high tide line of the sea," section 30103 is impermissibly vague. They also insist that by including within the coastal zone the larger area designated by the maps, rather than merely property 1,000 yards inland from the sea, section 30103 effectuates a taking of their property. Finally, respondents ask us to interpret section 30103 to exclude any reference to the maps in defining the coastal zone.

Addressing respondents' vagueness argument, we consider the objection to a reference in section 30103 to "maps identified and set forth in Section 17 of that chapter . . . ." Respondents maintain that the boundaries of the coastal zone as depicted in such maps are not sufficiently ascertainable, and, more importantly, that they conflict with the verbal description of the coastal zone given in the statute--inland 1,000 yards from the mean high tide of the sea.

Generally, statutes must be upheld unless their unconstitutionality clearly, positively and unmistakably appears. ( *Collins v. Riley* (1944) 24 Cal.2d 912, 915 [152 P.2d 169]; *People v. Demery* (1980) 104 Cal.App.3d 548, 556 [163 Cal.Rptr. 814].) Thus, statutes are construed to clarify ambiguous terms [\*\*36] and uncertainties can be removed by reference to common understanding or technical meanings. ( *Demery, supra*; *Pennisi v. Department of Fish & Game* (1979) 97 Cal.App.3d 268, 277 [158 Cal.Rptr. 683].)

But it is an established principle of due process that an enactment is void for vagueness if its provisions and requirements are not clearly defined. ( *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109 [33 L.Ed.2d 222, 227-228, 92 S.Ct. 2294]; *Music Plus Four, Inc. v. Barnet* (1980) 114 Cal.App.3d 113, 125-126 [170 Cal.Rptr. 419].) No one may be required at peril of life, liberty or property to speculate as to the meaning of statutes. All are entitled [\*587] to be informed as to what the state commands or forbids. "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application violates the first essential of due process of law. ( *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391 [70 L.Ed. 322, 328, 46 S.Ct. 126]; see also *Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 491 [134 Cal.Rptr. 630, 556 [\*\*37] P.2d 1081].) "A statute must be definite enough to provide a standard of conduct for those whose activities are proscribed as well as for the ascertainment of guilt by the courts called upon to apply it." ( *People v. McCaughan* (1957) 49 Cal.2d 409, 414 [317 P.2d 974]; *Merandette v. City & County of San Francisco* (1979) 88 Cal.App.3d 105, 112 [151 Cal.Rptr. 580].) "'The generally

accepted criterion is whether the terms of the challenged statute are "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." ( *People v. Smith* (1984) 35 Cal.3d 798, 809 [201 Cal.Rptr. 311, 678 P.2d 886].) Civil as well as criminal statutes must not violate the proscription against vagueness. ( *People v. McCaughan*, *supra*, 49 Cal.2d 409, 414.)

But the presumptive validity of a legislative act militates against invalidating a statute merely because difficulty is found determining whether certain acts or offenses fell within its language. ( *People v. Smith*, *supra*, 35 Cal.3d 798, 810; *Bowland v. Municipal Court*, *supra*, 18 Cal.3d 479, 492.) "Reasonable certainty is all that is required." ( *People* [\*38] *v. Superior Court* (Hartway) 19 Cal.3d 338, 345 [138 Cal.Rptr. 66, 562 P.2d 1315].) Mere difficulty in ascertaining the meaning of a statute will not render it nugatory. ( *People v. Anderson* (1972) 29 Cal.App.3d 551, 561 [105 Cal.Rptr. 664].) A statute must only give sufficiently definite warning of the conduct it proscribes in terms reasonably certain to convey what is prohibited. ( *Hartway*, *supra*, at p. 347; *Music Plus Four, Inc. v. Barnet*, *supra*, 114 Cal.App.3d 113, 126.) And in all cases, a statute must be considered, if possible, "from the standpoint of the reasonable man who might be subject to its terms." ( *People v. Cramblit* (1976) 62 Cal.App.3d 475, 482 [133 Cal.Rptr. 232].)

Section 30103 refers to maps of the coastal zone "set forth in Section 17" of chapter 1330 of the Statutes of 1976. Section 17 explains that the "coastal zone, as generally defined in Section 30103 of the Public Resources Code, shall include the land and water areas as shown on the . . . map prepared by the California Coastal Zone Conservation Commission titled 'California Coastal Zone' dated August 11, 1976, and on file with the Secretary of State." The maps so [\*39] designated provide a specific and accurate description of the coastal zone; they are, in our view, an adequate source of information which, upon reasonable inspection, would clearly inform as to whether his property was or was not within the zone.

We also find no merit in respondents' assertion that the maps are defective and void as violative of the constitutional directive that all statutes must be enacted by bill and in that form signed by the Governor (Cal. Const., art. IV, §§ 8, 10). The Coastal Act, as a whole, was enacted in the manner required by law. The provisions of that legislation incorporate the maps into the Coastal Act as duly promulgated. We find no such irregularity as is claimed.

As to the claimed inconsistency between the maps and the reference in section 30103 to "1,000 yards from the mean high tide line of the sea," we have no difficulty ascertaining the legislative intent underlying the statutory language and construing its provisions so as to clarify any ambiguity. Upon reading section 30103 in its entirety, it is evident that the maps are intended to provide the specific boundary of the coastal zone as determined by the Commission, with mere general guidance [\*40] being given by the reference to the area 1,000 yards inland from the sea. We thus [\*588] harmonize the provisions of the law in accordance with an established maxim of statutory interpretation ( *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836]), while at the same time furthering the objectives of the Coastal Act by liberally protecting the state's coastal resources. ( *South Central Coast Regional Com. v. Charles A. Pratt Construction Co.*, *supra*, 128 Cal.App.3d 830, 844.) As so construed,

section 30103 is neither vague nor ambiguous, providing as it does clear notice of the property defined as within the "coastal zone," including the 105-acre parcel which is the subject of the instant dispute, as conceded by respondents in their briefs.

Respondents also contend that if the property is part of the "coastal zone" for purposes of the Coastal Act, then section 30103 results in an unconstitutional taking of property in violation of their due process rights. The essence of respondents' contention is that the "coastal zone boundary" purportedly established by the referenced maps bears no rational relationship [\*\*41] to the arguably legitimate purposes of the act, and thus the substantial interference with property owners' rights worked by the act amounts to a taking, giving rise to liability in inverse condemnation."

The Coastal Act has been repeatedly found not to constitute an unlawful taking. In an analogous case involving the imposition of rigorous limitations on the use of private property, *Agins v. City of Tiburon* (1979) 24 Cal.3d 266 [157 Cal.Rptr. 372, 598 P.2d 25], our high court declared that such limitations are not the equivalent of a taking requiring compensation. The court reasoned that "although a landowner so aggrieved may challenge both the constitutionality of the ordinance and the manner in which it is applied to his property by seeking to establish the invalidity of the ordinance either through the remedy of declaratory relief or mandamus, he may not recover damages on the theory of inverse condemnation." ( *Id.*, at pp. 269-270.) The reasoning of *Agins* has been specifically applied to the Coastal Act to deny claims that it results in compensable takings. ( *Walter H. Leimert Co. v. California Coastal Com.*, *supra*, 149 Cal.App.3d 222, 234-235; *Briggs* [\*\*42] *v. State of California ex rel. Dept. of Parks & Recreation*, *supra*, 98 Cal.App.3d 190, 202-207; *Sierra Club, Inc. v. California Coastal Com.*, *supra*, 95 Cal.App.3d 495, 502-503; *Reed v. California Coastal Zone Conservation Com.* (1975) 55 Cal.App.3d 889, 894 [127 Cal.Rptr. 786].)

Nor have respondents established that the inclusion within the "coastal zone" of all property designated by the maps constitutes a violation of due process. When entertaining a substantive due process challenge to legislation, "[i]t is the well settled rule that determination of the necessity and form of regulations enacted pursuant to the police power "is primarily a legislative and not a judicial function, and is to be tested in the courts not by what the judges individually or collectively may think of the wisdom or necessity of a particular regulation, but solely by the answer to the question is there any reasonable basis in fact to support the legislative determination of the regulation's wisdom and necessity?" ( *Consolidated Rock Products Co. v. City of Los Angeles*, 57 Cal.2d 515, 522, [20 Cal.Rptr. 638, 370 P.2d 342].) . . . [E]ven if the reasonableness of the [\*\*43] regulation is fairly debatable, the legislative determination will not be disturbed. ( *Hammer v. Town of Ross*, 59 Cal.2d 776, 783 [31 Cal.Rptr. 335, 382 P.2d 375]'.) [Citation.] This rule follows the reasoning of a line of cases emanating from the United States Supreme Court decisions in *Williamson v. Optical Co.* (1955) 348 U.S. 483, 488 [99 L.Ed. 563, 572, 75 S.Ct. 461], and *Ferguson v. Skrupa* (1963) 372 U.S. 726 [10 L.Ed.2d 93, 83 S.Ct. 1028, 95 A.L.R.2d 1347]. In *Ferguson* the court said that under the due process clause: 'We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are [\*589] elected to pass laws.' ( *Ferguson v.*

*Skrupa, supra*, 372 U.S. 726, 730 [10 L.Ed.2d 83, 97].)" ( *Remmenga v. California Coastal Com.* (1985) 163 Cal.App.3d 623, 629 [209 Cal.Rptr. 628].)

The record is absolutely devoid of any showing by respondents that the "coastal zone" as defined by the maps does not serve any valid governmental interest. To the contrary, given the undisputed and overriding need to protect the fragile resources [\*\*44] and natural environment of the state's coastal zone, dictating a liberal application of the Coastal Acts provisions ( *Urban Renewal Agency v. California Coastal Zone Conservation Com., supra*, 15 Cal.3d 577, 588), we find ample reason to uphold section 30103 as a valid exercise of the state's police power. ( *CEED v. California Coastal Zone Conservation Co., supra*, 43 Cal.App.3d 306, 314.)

To recapitulate, since the original subdivision of the 105-acre parcel into four lots was completed before the effective date of the Coastal Act, it is valid. The vested rights exemption provides a defense to the Commission's challenge to any development of the property as so subdivided--including construction of a house or well on the subdivided lots--undertaken as part of the original four-lot subdivision. The second subdivision of Parcel C into two lots is not exempt from the provisions of the Coastal Act, but the applicable one-year statute of limitations bars the request for additional civil fines and exemplary damages for the attempt to create it. Only the claims for civil fines under section 30820 and injunctive relief survive.

In their cross-appeal, the Graves argue that the [\*\*45] trial court should have dismissed the Commission's action against them for lack of evidence. They insist that the trial court erred by failing to grant their motion for judgment pursuant to section 631.8 of the Code of Civil Procedure, pointing out that they did no more than own the property, which, they claim, did not amount to "development" thereof in violation of the Coastal Act. They also note that they rescinded their purchase agreement with respondents Hagiperos and Martel and consequently did not in fact own the property at the time of trial.

Unapproved "development" of property in the coastal zone is a violation of the Act (§§ 30600, 30601, 30820) justifying civil fines and exemplary damages. (§§ 30820, 30821, 30822.) Since violations of the Act are continuing in nature and persist until cured or otherwise abated ( *CEED v. California Coastal Zone Conservation Com., supra*, 43 Cal.App.3d 306, 318), even those who, like the Graves, acquire property which has been developed without legal sanction from the Commission, take such property subject to remedial action curative of violations of the Act. Injunctive relief against such property owners may be necessary and proper [\*\*46] to restrain or correct violations of the Coastal Act. Civil fines and exemplary damages continue to be appropriate penalties against those who knowingly maintain property which has been developed in violation of the Act.

Once the Graves discovered the possible violations, however, they rescinded their purchase agreement with the developers of the property and, soon after this action commenced, ceased to enjoy the status of owners. Under these circumstances, we think the Graves cannot be charged with violations of the Act, as they neither developed the property within the meaning of section 30106, nor presently own it in a condition violative of the Coastal Act. Nor is it necessary for



purposes of adequate injunctive relief to include the Graves as a party to any order restraining further violations of the Act. The case against the Graves must be dismissed.<sup>10</sup>

[\*590] The Graves also claim that the trial court erred by denying their request for expenses and attorney's fees under [\*\*47] section 2034, subdivision (c) of the Code of Civil Procedure, which provides: "If a party, after being served with a request under Section 2033 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any document or the truth of any matter of fact, he may apply to the court in the same action for an order requiring the other party to pay him or her the reasonable expenses incurred in making the proof, including reasonable attorney's fees. If the court finds that there were no good reasons for the denial and that the admissions sought were of substantial importance, the order shall be made."

We find, however, that the Graves have failed to establish lack of good cause for the Commission's refusal to admit the truth of the matters set out in their request for admission. Moreover, according to the record, the expenses for proof would have been minimal in light of the minor involvement of Graves' counsel at trial. And, finally, the Graves did not properly itemize their expenses to indicate the costs caused by appellant's refusal to make the admissions requested, [\*\*48] as is required for recovery under Code of Civil Procedure section 2034, subdivision (c). ( *Smith v. Circle P. Ranch Co.* (1978) 87 Cal.App.3d 267, 277-280 [150 Cal.Rptr. 828].) The trial court therefore did not abuse its discretion in denying the Graves' motion for expenses.

The judgment is affirmed in part and reversed in part as previously indicated, and the case remanded to the trial court for proceedings not inconsistent with the views expressed herein. Each side is to bear their own costs on appeal.

Racanelli, P. J., and Holmdahl, J., concurred.

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<sup>10</sup> In light of this conclusion, we need not address the Graves' contention that judgment in their favor is required as a sanction for appellant's failure to respond to requests for admissions.

## **EXHIBIT 12**

CALIFORNIA COASTAL COMMISSION  
CENTRAL COAST DISTRICT  
701 OCEAN STREET, ROOM 310  
SANTA CRUZ, CA 95060  
(408) 426-7390 ATSS: 8-529-2304

August 26, 1983

Larimore Cummins  
1307 West Cliff Drive  
Santa Cruz, CA 95060

### STATUS LETTER

RE: Application/Appeal No. 3-83-152

The status of this matter is noted below.

- ☐ This application was filed on \_\_\_\_\_.  
You will be notified of the place and date of the public hearing.  
IMPORTANT: The enclosed Notice of Pending Permit must be posted  
on the site, in a conspicuous place, within 3 days of receipt.  
(unless you have already done so)
- ☒ This application is incomplete and cannot be filed or processed  
until ~~the items listed on the attached sheet have been completed~~  
~~and submitted to the District Office~~ the City of Santa Cruz  
completes its CEQA review.
- ☐ This appeal was received \_\_\_\_\_ and has been  
determined to be a valid appeal. You will be notified of the  
place and date of the public hearing.
- ☐ This appeal was received \_\_\_\_\_, after the  
expiration of the appeal period, hence it is not a valid appeal.
- ☒ ~~This appeal was received \_\_\_\_\_ but has been~~  
~~determined invalid for the following reasons:~~  
We are returning your enclosed check no. 299, dated 7/28/83,  
for \$75.00. We will hold the remainder of your application  
materials until further notice.
- ☐ No permit required.

If you have any questions, please contact Ies Strnad or Joy Chase.

Very truly yours,

*Lynda Tanaka*  
Lynda Tanaka

Coast 29: 7/31

Exhibit 9  
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